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PARTS 1200 TO 1499
Revised as of January 1, 1991

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PARTS 1200 TO 1499

Revised as of January 1, 1991

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OF GENERAL APPLICABILITY
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AS OF JANUARY 1, 1991

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To cite the regulations in this volume use title, part and section number. Thus, 7 CFR 1200.1 *refers to title 7, part 1200, section 1.*

Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

ISSUE DATES

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16	as of January 1
Title 17 through Title 27	as of April 1
Title 28 through Title 41	as of July 1
Title 42 through Title 50	as of October 1

The appropriate revision date is printed on the cover of each volume.

LEGAL STATUS

The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

HOW TO USE THE CODE OF FEDERAL REGULATIONS

The Code of Federal Regulations is kept up to date by the individual issues of the Federal Register. These two publications must be used together to determine the latest version of any given rule.

To determine whether a Code volume has been amended since its revision date (in this case, January 1, 1991), consult the "List of CFR Sections Affected (LSA)," which is issued monthly, and the "Cumulative List of Parts Affected," which appears in the Reader Aids section of the daily Federal Register. These two lists will identify the Federal Register page number of the latest amendment of any given rule.

EFFECTIVE AND EXPIRATION DATES

Each volume of the Code contains amendments published in the Federal Register since the last revision of that volume of the Code. Source citations for the regulations are referred to by volume number and page number of the Federal Register and date of publication. Publication dates and effective dates are usually not the same and care must be exercised by the user in determining the actual effective date. In instances where the effective date is beyond the cut-off date for the Code a note has been inserted to reflect the future effective date. In those instances where a regulation published in the Federal Register states a date certain for expiration, an appropriate note will be inserted following the text.

OMB CONTROL NUMBERS

The Paperwork Reduction Act of 1980 (Pub. L. 96-511) requires Federal agencies to display an OMB control number with their information collection request. Many agencies have begun publishing numerous OMB control numbers as amendments to existing regulations in the CFR. These OMB numbers are placed as close as possible to the applicable recordkeeping or reporting requirements.

OBSOLETE PROVISIONS

Provisions that become obsolete before the revision date stated on the cover of each volume are not carried. Code users may find the text of provisions in effect on a given date in the past by using the appropriate numerical list of sections affected. For the period before January 1, 1986, consult either the List of CFR Sections Affected, 1949-1963, 1964-1972, or 1973-1985, published in seven separate volumes. For the period beginning January 1, 1986, a "List of CFR Sections Affected" is published at the end of each CFR volume.

INCORPORATION BY REFERENCE

What is incorporation by reference? Incorporation by reference was established by statute and allows Federal agencies to meet the requirement to publish regulations in the Federal Register by referring to materials already published elsewhere. For an incorporation to be valid, the Director of the Federal Register must approve it. The legal effect of incorporation by reference is that the material is treated as if it were published in full in the Federal Register (5 U.S.C. 552(a)). This material, like any other properly issued regulation, has the force of law.

What is a proper incorporation by reference? The Director of the Federal Register will approve an incorporation by reference only when the requirements of 1 CFR part 51 are met. Some of the elements on which approval is based are:

(a) The incorporation will substantially reduce the volume of material published in the Federal Register.

(b) The matter incorporated is in fact available to the extent necessary to afford fairness and uniformity in the administrative process.

(c) The incorporating document is drafted and submitted for publication in accordance with 1 CFR part 51.

Properly approved incorporations by reference in this volume are listed in the Finding Aids at the end of this volume.

What if the material incorporated by reference cannot be found? If you have any problem locating or obtaining a copy of material listed in the Finding Aids of this volume as an approved incorporation by reference, please contact the agency that issued the regulation containing that incorporation. If, after contacting the agency, you find the material is not available, please notify the Director of the Federal Register, National Archives and Records Administration, Washington DC 20408, or call (202) 523-4534.

CFR INDEXES AND TABULAR GUIDES

A subject index to the Code of Federal Regulations is contained in a separate volume, revised annually as of January 1, entitled CFR Index and Finding Aids. This volume contains the Parallel Table of Statutory Authorities and Agency

Rules (Table I), and Acts Requiring Publication in the Federal Register (Table III). A list of CFR titles, chapters, and parts and an alphabetical list of agencies publishing in the CFR are also included in this volume.

An index to the text of "Title 3—The President" is carried within that volume.

The Federal Register Index is issued monthly in cumulative form. This index is based on a consolidation of the "Contents" entries in the daily Federal Register.

A List of CFR Sections Affected (LSA) is published monthly, keyed to the revision dates of the 50 CFR titles.

REPUBLICATION OF MATERIAL

There are no restrictions on the republication of material appearing in the Code of Federal Regulations.

INQUIRIES AND SALES

For a summary, legal interpretation, or other explanation of any regulation in this volume, contact the issuing agency. Inquiries concerning editing procedures and reference assistance with respect to the Code of Federal Regulations may be addressed to the Director, Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408 (telephone 202-523-3517). Sales are handled exclusively by the Superintendent of Documents, Government Printing Office, Washington, DC 20402 (telephone 202-783-3238).

MARTHA L. GIRARD,
Director,
Office of the Federal Register.

January 1, 1991.

THIS TITLE

Title 7—AGRICULTURE is composed of nineteen volumes. The parts in these volumes are arranged in the following order: Parts 0-26, 27-45, 46-51, Part 52, 53-209, 210-299, 300-399, 400-699, 700-899, 900-999, 1000-1059, 1060-1119, 1120-1199, 1200-1499, 1500-1899, 1900-1939, 1940-1949, 1950-1999, and Part 2000 to end. The contents of these volumes represent all current regulations codified under this title of the CFR as of January 1, 1991.

An alphabetical list of U.S. standards for grades of processed fruits, vegetables and certain other products appears in the Finding Aids section of the volume containing Part 52.

The Food and Nutrition Service current regulations in the volume containing Parts 210-299, include the Child Nutrition Programs and the Food Stamp Program. The regulations of the Federal Crop Insurance Corporation are found in the volume containing Parts 400-699.

All marketing agreements and orders for fruits, vegetables and nuts appear in the one volume containing Parts 900-999. All marketing agreements and orders for milk appear in three volumes containing Parts 1000-1199. Part 900—General Regulations is carried as a note in each of the three volumes containing Parts 1000-1199, and Part 1000—General Provisions of Federal Milk Marketing Orders is carried as a note in each of the two volumes containing Parts 1060-1199, as a convenience to the user.

Redesignation tables appear in the Finding Aids section of several volumes.

For this volume, Jacquelyn J. Demsky was Chief Editor. The Code of Federal Regulations publication program is under the direction of Richard L. Claypoole, assisted by Alomha S. Morris.

Would you like to know...

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Title 7—Agriculture

(This book contains Parts 1200 to 1499)

SUBTITLE B—REGULATIONS OF THE DEPARTMENT OF AGRICULTURE—(Continued):

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PART 1200—RULES OF PRACTICE AND PROCEDURE GOVERNING PROCEEDINGS UNDER RESEARCH, PROMOTION, AND EDUCATION PROGRAMS

Subpart—Rules of Practice and Procedure Governing Proceedings to Formulate and Amend an Order

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AUTHORITY: Cotton Research and Promotion Act, as amended, Pub. L. 89-502, 89th Cong., approved July 13, 1966, 7 U.S.C. 2101-2119; Egg Research and Consumer Information Act, as amended, Pub. L. 93-428, 93rd Cong., approved October 1, 1974, 7 U.S.C. 2701-2718; Floral Research and Consumer Information Act, Pub. L. 97-98, 97th Cong., approved December 22, 1981, 7 U.S.C. 4301-4319; Potato Research and Promotion Act, as amended, Pub. L. 91-670, 91st Cong., approved January 11, 1971, 7 U.S.C. 2611-2627; Wheat and Wheat Foods Research and Nutrition Education Act, Pub. L. 95-113, 95th Cong., approved September 29, 1977, 7 U.S.C. 3401-3417; Honey Research, Promotion, and Consumer Information Act, Pub. L. 98-590; 98th Cong., approved October 30, 1984, 7 U.S.C. 4601-4612; Watermelon Research and Promotion Act, Pub. L. 99-198; 99th Cong., approved December 23, 1985, 7 U.S.C. 4901-4916.

Subpart—Rules of Practice and Procedure Governing Proceedings to Formulate and Amend an Order

SOURCE: 47 FR 44684, Oct. 8, 1982, unless otherwise noted.

§ 1200.1 Words in the singular form.

Words in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 1200.2 Definitions.

As used in this subpart, the terms as defined in the Act shall apply with equal force and effect. In addition, unless the context otherwise requires:

(a) The term "Act" means the Cotton Research and Promotion Act, as amended, Pub. L. 89-502, 89th Cong., approved July 13, 1966, 7 U.S.C. 2101-2119; the Egg Research and Consumer Information Act, as amended, Pub. L. 93-428, 93rd Cong., approved October 1, 1974, 7 U.S.C. 2701-2718; the Floral Research and Consumer Information Act, Pub. L. 97-98, 97th Cong., approved December 22, 1981, 7 U.S.C. 4301-4319; the Potato Research and Promotion Act, as amended, Pub. L. 91-670, 91st Cong., approved January 11, 1971, 7 U.S.C. 2611-2627; the Wheat and Wheat Foods Research and Nutrition Education Act, Pub. L. 95-113, 95th Cong., approved September 29, 1977, 7 U.S.C. 3401-3417; the Honey Research, Promotion, and Consumer Information Act, Pub. L. 98-590, 98th Cong., approved October 30, 1984, 7 U.S.C. 4601-4612; the Watermelon Research and Promotion Act, Pub. L. 99-198; 99th Cong., approved December 23, 1985, 7 U.S.C. 4901-4916; and any subsequent research, consumer information, promotion, and nutrition education acts established as Public Law by Congress.

(b) The term "Department" means the United States Department of Agriculture.

(c) The term "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

(d) The term "judge" or "administrative law judge" means any administrative law judge appointed pursuant to 5 U.S.C. 3105 and assigned to conduct the hearing.

(e) The term "Administrator" means the Administrator of the Agricultural

Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(f) The term "FEDERAL REGISTER" means the publication provided for by the Federal Register Act, approved July 26, 1935 (44 U.S.C. 1501-1511), and acts supplementing and amending it.

(g) The term "hearing" means that part of the proceeding which involves the submission of evidence.

(h) The term "order" means any order or plan or any amendment to it which may be issued pursuant to the Act.

(i) The term "proceeding" means a proceeding forming the basis on which an order may be issued.

(j) The term "hearing clerk" means the hearing clerk, U.S. Department of Agriculture, Washington, DC.

(k) The term "board" means the board or council established by the order to administer the program.

[47 FR 44684, Oct. 8, 1982, as amended at 52 FR 12899, Apr. 20, 1987]

§ 1200.3 Proposals.

(a) An order may be proposed by any organization certified pursuant to the Act or any interested person affected by the Act, including the Secretary. Any person or organization other than the Secretary proposing an order shall file with the Administrator a written application, together with a copy of the proposal, requesting the Secretary to hold a hearing upon the proposal. Upon receipt of such proposal, the Administrator shall cause such investigation to be made and such consideration to be given as, in the Administrator's opinion, are warranted. If the investigation and consideration lead the Administrator to conclude that the proposed order will not tend to effectuate the declared policy of the Act, or that for other proper reasons a hearing should not be held on the proposal, the Administrator shall deny the application, and promptly notify the applicant of such denial, which notice shall be accompanied by a brief statement of the grounds for the denial.

(b) If the investigation and consideration lead the Administrator to conclude that the proposed order will tend to effectuate the declared policy of the Act, or if the Secretary desires to propose an order, the Administrator shall sign and cause to be served a notice of hearing, as provided herein.

§ 1200.4 Reimbursement of Secretary's expenses.

If provided for in the Act or any amendment thereto, expenses incurred by the Secretary in preparing or amending the order, administering the order, and conducting the referendum shall be reimbursed.

§ 1200.5 Institution of proceedings.

(a) *Filing and contents of the notice of hearing.* The proceeding shall be instituted by filing the notice of hearing with the hearing clerk. The notice of hearing shall contain a reference to the authority under which the order is proposed; shall define the scope of the hearing as specifically as may be practicable; shall contain either the terms or substance of the proposed order or a description of the subjects and issues involved; and shall state the time and place of such hearing, and the place where copies of such proposed order may be obtained or examined. The time of the hearing shall not be less than 15 days after the date of publication of the notice in the FEDERAL REGISTER, as provided herein, unless the Administrator shall determine that an emergency exists which requires a shorter period of notice, in which case the period of notice shall be that which the Administrator may determine to be reasonable in the circumstances: Except that in the case of hearings on amendments to an order, the time of the hearing may be less than 15 days but shall not be less than three days after the date of publication in the FEDERAL REGISTER.

(b) *Giving notice of hearing and supplemental publicity.* (1) The Administrator shall give or cause to be given notice of hearing in the following manner:

(i) By publication of the notice of hearing in the FEDERAL REGISTER;

(ii) By mailing a copy of the notice of hearing to each organization known by the Administrator to be interested therein;

(iii) By issuing a press release containing the complete text or a summary of the contents of the notice of hearing and making the same available to such newspapers as, in the Administrator's discretion, are best calculated to bring the notice to the attention of the persons interested therein; and

(iv) By forwarding copies of the notice of hearing addressed to those Governors of the States and executive heads of territories and possessions of the United States and the mayor of the District of Columbia that are directly affected by such order.

(2) Legal notice of the hearing shall be deemed to be given if notice is given in the manner provided by paragraph (b)(1)(i) of this section; failure to give notice in the manner provided in paragraphs (b)(2) (ii), (iii), and (iv) of this section shall not affect the legality of the notice.

(c) *Record of notice and supplemental publicity.* There shall be filed with the hearing clerk or submitted to the judge at the hearing an affidavit or certificate of the person giving the notice provided in paragraphs (b)(1) (iii) and (iv) of this section. In regard to the provisions relating to mailing in paragraph (b)(1)(ii) of this section, determination by the Administrator that such provisions have been complied with shall be filed with the hearing clerk or submitted to the judge at the hearing. In the alternative, if notice is not given in the manner provided in paragraphs (b)(1) (ii), (iii), and (iv) of this section there shall be filed with the hearing clerk or submitted to the judge at the hearing a determination by the Administrator that such notice is impracticable, unnecessary, or contrary to the public interest with a brief statement of the reasons for such determination. Determinations by the Administrator as herein provided shall be final.

§ 1200.6 Docket number.

Each proceeding, immediately following its institution, shall be assigned a docket number by the hearing clerk and thereafter the proceeding may be referred to by such number.

§ 1200.7 Judge.

(a) *Assignment.* No judge who has any pecuniary interest in the outcome of a proceeding shall serve as judge in such proceeding.

(b) *Power of judge.* Subject to review by the Secretary, as provided elsewhere in this subpart, the judge in any proceeding shall have power to:

(1) Rule upon motions and requests;

(2) Change the time and place of hearings, and adjourn the hearing from time to time or from place to place;

(3) Administer oaths and affirmations and take affidavits;

(4) Examine and cross-examine witnesses and receive evidence;

(5) Admit or exclude evidence;

(6) Hear oral argument on facts or law; and

(7) Do all acts and take all measures necessary for the maintenance of order at the hearings and the efficient conduct of the proceeding.

(c) *Who may act in absence of judge.* In case of the absence of the judge or the judge's inability to act, the powers and duties to be performed by the judge under this part in connection with a proceeding may, without abatement of the proceeding unless otherwise ordered by the Secretary, be assigned to any other judge.

(d) *Disqualification of judge.* The judge may at any time withdraw as judge in a proceeding if such judge deems himself or herself to be disqualified. Upon the filing by an interested person in good faith of a timely and sufficient affidavit of personal bias or disqualification of a judge, the Secretary shall determine the matter as a part of the record and decision in the proceeding, after making such investigation or holding such hearings, or both, as the Secretary may deem appropriate in the circumstances.

§ 1200.8 Motions and requests.

(a) *General.* (1) All motions and requests shall be filed with the hearing clerk, except that those made during the course of the hearing may be filed with the judge or may be stated orally and made a part of the transcript.

(2) Except as provided in § 1200.17(b) such motions and requests shall be addressed to, and ruled on by, the judge if made prior to certification of the transcript pursuant to § 1200.11 or by the Secretary if made thereafter.

(b) *Certification to Secretary.* The judge may, in his or her discretion, submit or certify to the Secretary for decision any motion, request, objection, or other question addressed to the judge.

§ 1200.9 Conduct of the hearing.

(a) *Time and place.* The hearing shall be held at the time and place fixed in the notice of hearing, unless the judge shall have changed the time or place, in which event the judge shall file with the hearing clerk a notice of such change, which notice shall be given in the same manner as provided in § 1200.5 (relating to the giving of notice of the hearing): Except that if the change in time or place of hearing is made less than five days prior to the date previously fixed for the hearing, the judge either in addition to or in lieu of causing the notice of the change to be given, shall announce, or cause to be announced, the change at the time and place previously fixed for the hearing.

(b) *Appearances*—(1) *Right to appear.* At the hearing, any interested person shall be given an opportunity to appear, either in person or through authorized counsel or representative, and to be heard with respect to matters relevant and material to the proceeding. Any interested person who desires to be heard in person at any hearing under these rules shall, before proceeding to testify, state his or her name, address, and ocupation. If any such person is appearing through a counsel or representative, such person or such counsel or representative shall, before proceeding to testify or otherwise to participate in the hearing, state for the record the authority to act as such counsel or representative, and the names, addresses, and occupations of such person and such counsel or representative. Any such person or such counsel or representative shall give such other information respecting such appearance as the judge may request.

(2) *Debarment of counsel or representative.* (i) Whenever, while a proceeding is pending before the judge, such judge finds that a person, acting as counsel or representative for any person participating in the proceeding, is guilty of unethical or unprofessional conduct, the judge may order that such person be precluded from further acting as counsel or representative in such proceeding. An appeal to the Secretary may be taken from any such order, but the proceeding shall not be delayed or suspended pending disposition of the appeal: Except that the judge may suspend the proceeding for a reasonable time for the purpose of enabling the client to obtain other counsel or representative.

(ii) In case the judge has ordered that a person be precluded from further action as counsel or representative in the proceeding, the judge within a reasonable time thereafter shall submit to the Secretary a report of the facts and circumstances surrounding such order and shall recommend what action the Secretary should take respecting the appearance of such person as counsel or representative in other proceedings before the Secretary. Thereafter the Secretary may, after notice and an opportunity for hearing, issue such order respecting the appearance of such person as counsel or representative in proceedings before the Secretary as the Secretary finds to be appropriate.

(3) *Failure to appear.* If any interested person fails to appear at the hearing, that person shall be deemed to have waived the right to be heard in the proceeding.

(c) *Order of procedure.* (1) The judge shall, at the opening of the hearing prior to the taking of testimony, have noted as part of the record the notice of hearing as filed with the Office of the Federal Register and the affidavit or certificate of the giving of notice or the determination provided for in § 1200.5(c).

(2) Evidence shall then be received with respect to the matters specified in the notice of the hearing in such order as the judge shall announce.

(d) *Evidence*—(1) *General.* The hearing shall be publicly conducted, and the testimony given at the hearing shall be reported verbatim.

(i) Every witness shall, before proceeding to testify, be sworn or make affirmation. Cross-examination shall be permitted to the extent required for a full and true disclosure of the facts.

(ii) When necessary, in order to prevent undue prolongation of the hearing, the judge may limit the number of times any witness may testify to the same matter or the amount of corroborative or cumulative evidence.

(iii) The judge shall, insofar as practicable, exclude evidence which is immaterial, irrelevant, or unduly repetitious, or which is not of the sort upon which responsible persons are accustomed to rely.

(2) *Objections.* If a party objects to the admission or rejection of any evidence or to any other ruling of the judge during the hearing, such party shall state briefly the grounds of such objection, whereupon an automatic exception will follow if the objection is overruled by the judge. The transcript shall not include argument or debate thereon except as ordered by the judge. The ruling of the judge on any objection shall be a part of the transcript. Only objections made before the judge may subsequently be relied upon in the proceeding.

(3) *Proof and authentication of official records or documents.* An official record or document, when admissible for any purpose, shall be admissible as evidence without the presence of the person who made or prepared the same. The judge shall exercise discretion in determining whether an official publication of such record or document shall be necessary, or whether a copy would be permissible. If permissible such a copy should be attested to by the person having legal custody of it, and accompanied by a certificate that such person has the custody.

(4) *Exhibits.* All written statements, charts, tabulations, or similar data offered in evidence at the hearing shall, after identification by the proponent and upon satisfactory showing of authenticity, relevancy, and materiality, be numbered as exhibits and received in evidence and made a part of the record. Such exhibits shall be submitted in quadruplicate and in documentary form. In case the required number of copies is not made available, the judge shall exercise discretion as to whether said exhibits shall, when practicable, be read in evidence or whether additional copies shall be required to be submitted within a time to be specified by the judge. If the testimony of a witness refers to a statute, or to a report or document (including the record of any previous hearing), the judge, after inquiry relating to the identification of such statute, report, or document, shall determine whether the same shall be produced at the hearing and physically be made a part of the evidence as an exhibit, or whether it shall be incorporated into the evidence by reference. If relevant and material matter offered in evidence is embraced in a report or document (including the record of any previous hearing) containing immaterial or irrelevant matter, such immaterial or irrelevant matter shall be excluded and shall be segregated insofar as practicable, subject to the direction of the judge.

(5) *Official notice.* Official notice at the hearing may be taken of such matters as are judicially noticed by the courts of the United States and of any other matter of technical, scientific, or commercial fact of established character: Except that interested persons shall be given an adequate period of time, at the hearing or subsequent to it, of matters so noticed and shall be given adequate opportunity to show that such facts are inaccurate or are erroneously noticed.

(6) *Offer of proof.* Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the transcript. The offer of proof shall consist of a brief statement describing the evidence to be offered. If the evidence consists of a brief oral statement or of an exhibit, it shall be inserted into the transcript in toto. In such event, it shall be considered a part of the transcript if the Secretary decides that the judge's ruling in excluding the evidence was erroneous. The judge shall not allow the in-

sertion of such evidence in toto if the taking of such evidence will consume a considerable length of time at the hearing. In the latter event, if the Secretary decides that the judge erred in excluding the evidence, and that such error was substantial, the hearing shall be reopened to permit the taking of such evidence.

§ 1200.10 Oral and written arguments.

(a) *Oral argument before the judge.* Oral argument before the judge shall be in the discretion of the judge. Such argument, when permitted, may be limited by the judge to any extent that the judge finds necessary for the expeditious disposition of the proceeding and shall be reduced to writing and made part of the transcript.

(b) *Briefs, proposed findings, and conclusions.* The judge shall announce at the hearing a reasonable period of time within which interested persons may file with the hearing clerk proposed findings and conclusions, and written arguments or briefs, based upon the evidence received at the hearing, citing, where practicable, the page or pages of the transcript of the testimony where such evidence appears. Factual material other than that adduced at the hearing or subject to official notice shall not be alluded to therein, and, in any case, shall not be considered in the formulation of the order. If the person filing a brief desires the Secretary to consider any objection made by such person to a ruling of the judge, as provided in § 1200.9(d), that person shall include in the brief a concise statement concerning each such objection, referring, where practicable, to the pertinent pages of the transcript.

§ 1200.11 Certification of the transcript.

The judge shall notify the hearing clerk of the close of a hearing as soon as possible thereafter and of the time for filing written arguments, briefs, proposed findings, and proposed conclusions and shall furnish the hearing clerk with such other information as may be necessary. As soon as possible after the hearing, the judge shall transmit to the hearing clerk an original and three copies of the transcript of the testimony and the original and all copies of the exhibits not already on file in the office of the hearing clerk. The judge shall attach to the original transcript of the testimony a certificate stating that, to the best of the judge's knowledge and belief, the transcript is a true transcript of the testimony given at the hearing, except in such particulars as the judge shall specify, and that the exhibits transmitted are all the exhibits as introduced at the hearing with such exceptions as the judge shall specify. A copy of such certificate shall be attached to each of the copies of the transcript of testimony. In accordance with such certificate the hearing clerk shall note upon the official record copy, and cause to be noted on other copies of the transcript, each correction detailed therein by adding or crossing out (but without obscuring the text as originally transcribed) at the appropriate place any words necessary to make the same conform to the correct meaning, as certified by the judge. The hearing clerk shall obtain and file certifications to the effect that such corrections have been effectuated in copies other than the official record copy.

§ 1200.12 Copies of the transcript.

(a) During the period in which the proceeding has an active status in the Department, a copy of the transcript and exhibits shall be kept on file in the office of the hearing clerk where it shall be available for examination during official hours of business. Thereafter said transcript and exhibits shall be made available by the hearing clerk for examination during official hours of business after prior request and reasonable notice to the hearing clerk.

(b) If a personal copy of the transcript is desired, such copy may be obtained upon written application filed with the reporter and upon payment of fees at a rate that may be agreed upon with the reporter.

§ 1200.13 Administrator's recommended decision.

(a) *Preparation.* As soon as practicable following the termination of the period allowed for the filing of written arguments or briefs and proposed findings and conclusions the Administrator shall file with the hearing clerk a recommended decision.

(b) *Contents.* The Administrator's recommended decision shall include: (1) A preliminary statement containing a description of the history of the proceedings, a brief explanation of the material issues of fact, law, or discretion presented on the record, and proposed findings and conclusions about such issues, including the reasons or basis for such proposed findings; (2) a ruling upon each proposed finding or conclusion submitted by interested persons; and (3) an appropriate proposed order effectuating the Administrator's recommendations.

(c) *Exceptions to recommended decision.* Immediately following the filing of the recommended decision, the Administrator shall give notice thereof and opportunity to file exceptions thereto by publication in the FEDERAL REGISTER. Within a period of time specified in such notice any interested person may file with the hearing clerk exceptions to the Administrator's proposed order and a brief in support of such exceptions. Such exceptions shall be in writing, shall refer, where practicable, to the related pages of the transcript, and may suggest appropriate changes in the proposed order.

(d) *Omission of recommended decision.* The procedure provided in this section may be omitted only if the Secretary finds on the basis of the record that due and timely execution of the Secretary's functions imperatively and unavoidably requires such omission.

§ 1200.14 Submission to Secretary.

Upon the expiration of the period allowed for filing exceptions or upon request of the Secretary, the hearing clerk shall transmit to the Secretary the record of the proceeding. Such record shall include: All motions and requests filed with the hearing clerk and rulings thereon; the certified transcript; any proposed findings or conclusions or written arguments or briefs that may have been filed; the Administrator's recommended decision, if any; and such exceptions as may have been filed.

§ 1200.15 Decision by the Secretary.

After due consideration of the record, the Secretary shall render a decision. Such decision shall become a part of the record and shall include: (a) A statement of findings and conclusions, including the reasons or basis for such findings, upon all the material issues of fact, law, or discretion presented on the record, (b) a ruling upon each proposed finding and proposed conclusion not previously ruled upon in the record, (c) a ruling upon each exception filed by interested persons, and (d) either (1) denial of the proposal to issue an order, or (2) if the findings upon the record so warrant, an order, the provisions of which shall be set forth and such order shall be complete except for its effective date and any determinations to be made under § 1200.16: Except that such order shall not be executed, issued, or made effective until and unless the Secretary determines that the requirements of § 1200.16 have been met.

§ 1200.16 Execution of the order.

(a) *Issuance of the order.* The Secretary shall, if the Secretary finds that it will tend to effectuate the purposes of the Act, issue and make effective the order which was filed as part of the Secretary's decision pursuant to § 1200.15: Except that the issuance of such order shall have been approved or favored by eligible voters as required by the applicable Act.

(b) *Effective date of order.* No order shall become effective in less than 30 days after its publication in the FEDERAL REGISTER, unless the Secretary, upon good cause found and published with the order, fixes an earlier effective date.

(c) *Notice of issuance.* After issuance of the order, such order shall be filed with the hearing clerk, and notice thereof, together with notice of the effective date, shall be given by publication in the FEDERAL REGISTER.

§ 1200.17 Filing, extension of time, effective date of filing, and computation of time.

(a) *Number of copies.* Except as provided otherwise herein, all documents or papers required or authorized by the foregoing provisions hereof to be filed with the hearing clerk shall be filed in quadruplicate. Any documents or papers so required or authorized to be filed with the hearing clerk shall be filed with the judge during the course of an oral hearing.

(b) *Extension of time.* The time for filing of any document or paper required or authorized by the foregoing provisions to be filed may be extended by the judge (before the record is so certified by the judge) or by the Administrator (after the record is so certified by the judge but before it is transmitted to the secretary), or by the Secretary (after the record is transmitted to the secretary) upon request filed, and if, in the judgment of the judge, Administrator, or the Secretary, as the case may be, there is good reason for the extension. All rulings made pursuant to this paragraph shall be filed with the hearing clerk.

(c) *Effective date of filing.* Any document or paper required or authorized by the foregoing provisions to be filed shall be deemed to be filed when it is postmarked or, if otherwise delivered, when it is received by the hearing clerk.

(d) *Computation of time.* Sundays and Federal holidays shall be included in computing the time allowed for the filing of any document or paper: Except that when such time expires on a Sunday, or a Federal holiday, such period shall be extended to include the next following business day.

§ 1200.18 Ex parte communications.

(a) At no stage of the proceeding following the issuance of a notice of hearing and prior to the issuance of the Secretary's decision thereon shall an employee of the Department who is or may reasonably be expected to be involved in the decision process of the proceeding discuss ex parte the merits of the proceeding with any person having an interest in the proceeding or with any representative of such person: Except that procedural matters and status reports shall not be included within the limitation: And except further that an employee of the Department who is or may reasonably be expected to be involved in the decisional process of the proceeding may discuss the merits of the proceeding with such a person if all parties known to be interested in the proceeding have been given notice and an opportunity to participate. A memorandum of any such discussion shall be included in the record of the proceeding.

(b) No person interested in the proceeding shall make or knowingly cause to be made to an employee of the Department who is or may reasonably be expected to be involved in the decisional process of the proceeding an ex parte communication relevant to the merits of the proceeding except as provided in paragraph (a) of this section.

(c) If an employee of the Department who is or may reasonably be expected to be involved in the decisional process of the proceeding receives or makes a communication prohibited by this section, the Department shall place on the public record of the proceeding:

(1) All such written communications;

(2) Memoranda stating the substance of all such oral communications; and

(3) All written responses, and memoranda, stating the substance of all oral responses thereto.

(d) Upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this section, the Department may, to the extent consistent with the interest of justice and the policy of the underlying statute, take whatever steps are deemed necessary to nullify the effect of such communication.

(e) For the purposes of this section, "ex parte communication" means any oral or written communication not on the public record with respect to which reasonable prior notice to all interested parties is not given, but which shall not include requests for status reports (including requests on procedural matters) on a proceeding.

§ 1200.19 Additional documents to be filed with hearing clerk.

In addition to the documents or papers required or authorized by the foregoing provisions of this subpart to be filed with the hearing clerk, the hearing clerk shall receive for filing and shall have custody of all papers, reports, records, orders, and other documents which relate to the administration of any order and which the Secretary is required to issue or to approve.

§ 1200.20 Hearing before Secretary.

The Secretary may act in the place and stead of a judge in any proceeding herein. When the Secretary so acts, the hearing clerk shall transmit the record to the Secretary at the expiration of the period provided for the filing of proposed findings of fact, conclusions, and orders, and the Secretary shall then, after due consideration of the record, issue the final decision in the proceeding: Except the Secretary may issue a tentative decision in which event the parties shall be afforded an opportunity to file exceptions before the issuance of the final decision.

PART 1205—COTTON RESEARCH AND PROMOTION

Subpart—Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Orders

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AUTHORITY: Sec. 15, 80 Stat. 285; 7 U.S.C. 2114, sec. 7, 80 Stat. 281, 7 U.S.C. 2106, unless otherwise noted.

Subpart—Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Orders

§ 1205.50 Words in the singular form.

Words in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

[32 FR 2698, Feb. 9, 1967]

§ 1205.51 Definitions.

As used in this subpart, the terms as defined in the act shall apply with equal force and effect. In addition unless the context otherwise requires:

(a) The term "Act" means the Cotton Research and Promotion Act, as amended (80 Stat. 279 *et seq.*, 7 U.S.C. 2101-2119);

(b) The term "Department" means the U.S. Department of Agriculture;

(c) The term "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead;

(d) The term "administrative law judge" or "judge" means any administrative law judge appointed pursuant to 5 U.S.C. 3105, and assigned to the proceeding involved;

(e) The term "Administrator" means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated, or to whom authority may hereafter be delegated, to act in the Administrator's stead;

(f) The term "FEDERAL REGISTER" means the publication provided for by the act of July 26, 1935 (49 Stat. 500), and acts supplementary thereto and amendatory thereof;

(g) The term "order" means any order or any amendment thereto which may be issued pursuant to the act;

(h) The term "person" means any person who is subject to an order, or to whom an order is sought to be made applicable, or on whom an obligation has been imposed or is sought to be imposed under an order;

(i) The term "proceeding" means a proceeding before the Secretary arising under section 12(a) of the act;

(j) The term "hearing" means that part of the proceeding which involves the submission of evidence;

(k) The term "party" includes the Department;

(l) The term "hearing clerk" means the hearing clerk, U.S. Department of Agriculture, Washington, D.C.;

(m) [Reserved]

(n) The term "decision" means the judge's initial decision in proceedings subject to 5 U.S.C. 556 and 557, and includes the judge's (1) findings of fact and conclusions with respect to all material issues of fact, law or basis thereof, (2) order, (3) rulings on findings, conclusions and order submitted by the parties;

(o) The term "petition" includes an amended petition.

[32 FR 2698, Feb. 9, 1967, as amended at 39 FR 11254, Mar. 27, 1974; 41 FR 37092, Sept. 2, 1976; 50 FR 10931, Mar. 19, 1985]

§ 1205.52 Institution of proceeding.

(a) *Filing and service of petition.* Any person desiring to complain that any order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law, shall file with the hearing clerk, in quadruplicate, a petition in writing addressed to the Secretary. Promptly upon receipt of the petition, the hearing clerk shall transmit a true copy thereof to the Administrator and the General Counsel, respectively.

(b) *Further proceedings.* Further proceedings on petitions to modify or to be exempted from orders shall be governed by §§ 900.52 (excluding paragraph (a) of § 900.52) through 900.71 of this title (Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Marketing Orders), and as may hereafter be amended, and the same are incorporated herein and made a part hereof by reference.

[32 FR 2698, Feb. 9, 1967]

Subpart—Procedure for the Conduct of Referenda in Connection With Cotton Research and Promotion Orders

Source: 31 FR 14438, Oct. 9, 1966, unless otherwise noted.

§ 1205.200 General.

Referenda for the purpose of ascertaining whether the issuance by the Secretary of Agriculture of a cotton research and promotion order, or the termination or suspension of such an order, is approved or favored by producers shall, unless supplemented or modified by the Secretary, be conducted in accordance with this subpart.

§ 1205.201 Definitions.

(a) "Act" means the Cotton Research and Promotion Act, as amended (80 Stat. 279 *et seq.*, 7 U.S.C. 2101-2119).

(b) "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead and "Department" means the U.S. Department of Agriculture.

(c) "Consumer and Marketing Service" means the Agricultural Marketing Service of the Department.

(d) "Agricultural Stabilization and Conservation Service", also referred to as ASCS, means the Agricultural Stabilization and Conservation Service of the Department.

(e) "Administrator" means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has heretofore been delegated or may hereafter be delegated to act in the Administrator's stead.

(f) "Deputy Administrator" means the Deputy Administrator, Programs, Agricultural Stabilization and Conservation Service.

(g) "State committee" means the persons in a State designated by the Secretary as the Agricultural Stabilization and Conservation State Committee.

(h) "County committee" means the persons elected within a county as the county committee, pursuant to the regulations governing the selection and functions of the Agricultural Stabilization and Conservation county and community committees.

(i) "County executive director" means the person employed by the county committee to execute the policies of the county committee and be responsible for the day-to-day operations of the Agricultural Stabilization and Conservation Service county office, or the person acting in such capacity.

(j) "State executive director" means the person employed by the State committee to execute the policies of the State committee and to be responsible for the day-to-day operations of the Agricultural Stabilization and Conservation Service State Office, or the person acting in such capacity.

(k) "Order" means the order (including an amendatory order) with respect to which the Secretary has directed that a referendum be conducted.

(l) "Representative period" means the period designated by the Secretary pursuant to section 8 of the act.

(m) "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise, or legal entity, and wherever applicable, a State, political subdivision of a State, the Federal Government, or any agency thereof.

(n) "Upland cotton" means any cotton other than extra long staple cotton.

(o) "Engaged in the production." Except for a landlord of a cash rent tenant, each person sharing in an upland cotton crop, or proceeds thereof, on a farm as an owner, cash tenant, share tenant, sharecropper or landlord of a fixed rent, standing rent or share tenant shall be considered engaged in the production of such crop. In addition, any person who would have shared in an upland cotton crop, or proceeds thereof, but who, because of a natural disaster or other condition beyond his control, was prevented from planting or harvesting the crop shall be considered engaged in the production of such crop provided the person qualifies for a disaster payment under the ASCS upland cotton disaster payment program.

(p) "Producer" means any person engaged in the production of upland cotton.

[31 FR 14438, Oct. 9, 1966, as amended at 41 FR 37092, Sept. 2, 1976; 41 FR 51030, Nov. 19, 1976; 50 FR 10931, Mar. 19, 1985]

§ 1205.202 Agencies through which a referendum shall be conducted.

(a) *Agricultural Marketing Service.* The Administrator shall:

(1) Determine the referendum period.

(2) Give reasonable advance notice of the referendum (i) by utilizing without advertising expense available media of public information (including, but not being limited to, press and radio facilities) serving the upland cotton producing areas, announcing the dates, places, or methods of voting, and other pertinent information, and (ii) by such other means as the Administrator may deem advisable.

(3) Provide ballots and related material to be used in the referendum to ASCS. The ballot (i) shall provide for recording essential information for ascertaining whether the person voting is an eligible voter, and (ii) may provide for recording the total amount of upland cotton produced by the producer during the representative period.

(4) Make available to producers through ASCS county committees instructions on voting, an appropriate ballot and, except in the case of a referendum on the termination or suspension of an order, a summary of the terms and conditions of the order. The instructions on voting shall explain the method to be used in determining the amount of upland cotton produced during the representative period and shall specify whether such amount is to be entered on the ballot by the voter, subject to the following terms and conditions:

(i) If a current production year for which harvesting has not been completed is designated as the representative period, the amount of upland cotton produced shall be determined by the office of the county committee on the basis of the acreage planted or, in the case of approved prevented plantings under the disaster payment program, the acreage the person intended to plant up to the allotted acreage as determined by the county committee, and the established yield for ASCS program payment purposes: *Provided,* That on farms for which an established yield has not been established, the county committee shall determine an established yield based on actual production records on the farm for the preceding three years, as adjusted for any abnormal conditions, if available; if not available, on the basis of yields on similar farms in the area.

(ii) On farms in which more than one eligible voter is engaged in production, the vote cast by each voter shall represent only the amount of upland cotton that is the voter's share of the crop, or proceeds thereof.

(iii) If an eligible voter is engaged in production of upland cotton on more than one farm, such voter is entitled to only one vote but any vote cast by such voter shall represent the total amount of upland cotton that is that voter's share of the crop, or proceeds thereof, on all such farms: *Provided,* That only farms for which records are maintained by the ASCS county office designated as the voter's polling place shall be considered unless the voter, prior to the expiration of the referendum period, establishes to the satisfaction of such county office the voter's share of the crop, or proceeds thereof, on any additional farm or farms.

(b) *Agricultural Stabilization and Conservation Service.* Except for the functions specified in paragraph (a) of this section, the Deputy Administrator shall be in charge of and responsible for conducting each referendum. Each State committee shall be in charge of and responsible for conducting such referendum in its State. Each county committee shall be responsible for the proper holding of such referendum in its county. It shall be the duty of each committee to conduct each referendum in a fair, unbiased and impartial manner in accordance with the regulations in this subpart.

[31 FR 14438, Oct. 9, 1966, as amended at 41 FR 37092, Sept. 2, 1976; 41 FR 51030, Nov. 19, 1976; 50 FR 10931, Mar. 19, 1985]

§ 1205.203 Voting eligibility.

(a) *Special eligibility requirements.* Each person who was engaged in the production of upland cotton during the representative period shall be eligible to vote in a referendum.

(b) *General eligibility requirements.* (1) A person may qualify as an eligible voter by meeting the eligibility requirements, but no such person shall be entitled to more than one vote regardless of the number of upland cotton farms in which the person is interested or the number of communities, counties, or States in which are located farms in which such person is interested: *Provided, however,* That the individual members of a qualified partnership shall each have one vote, but the partnership as such shall not have a vote and an individual who qualifies as an eligible voter by reason of that individual's separate farming operations will be entitled to one vote even though that person is interested in an organization such as (but not limited to) a corporation which is also eligible as a voter and entitled to one vote. A person who, as a guardian, administrator, executor, or trustee engages in the production of upland cotton will be eligible to vote in such fiduciary capacity if, in such capacity, that person qualifies as an eligible voter.

In such cases the person for whom he or she is acting in a fiduciary capacity will not be eligible to vote. An individual may, if otherwise eligible, cast a ballot in his or her individual capacity although that person may also cast a ballot as a guardian, administrator, executor, or trustee. An individual who holds more than one fiduciary position may vote as a fiduciary in each case in which that person is otherwise eligible, as for example, if an individual is administrator of estate X, he or she may cast a ballot as administrator of estate X, and if the same individual is also administrator of estate Y, he or she may cast another ballot as administrator of estate Y.

(2) Where a group of several persons, such as husband, wife, and children, or unrelated individuals, are engaged in the production of upland cotton under the same lease or cropping agreement, only the person or persons who signed or entered into the lease or cropping agreement shall be eligible to vote. In the event two or more persons are engaged in the production of upland cotton as joint tenants, tenants in common, or owners of community property, each such person shall be entitled to one vote if otherwise qualified. For example, a husband or a wife is eligible to vote if he or she shares with his or her spouse in the proceeds of the required crop as an owner, cash tenant, share tenant, sharecopper or landlord of a fixed rent, standing rent or share tenant. Thus, if a husband and wife are tenants or sharecropper on a farm, jointly responsible under the rental or shar-

cropping agreement, both are eligible to vote. This is true whether the rental or sharercopping agreement is written, signed by both parties, or oral, provided both husband and wife made the oral agreement. A minor is not disqualified from voting solely because of minority if otherwise eligible and the minor is not less than 18 years of age.

(c) *Voting by proxy prohibited.* There shall be no voting by proxy or agent but a duly authorized officer of a corporation, association, or other legal entity, may cast its vote.

[31 FR 14438, Oct. 9, 1966, as amended at 41 FR 51030, Nov. 19, 1976; 50 FR 10931, Mar. 19, 1985]

§ 1205.204 Voting.

(a) *Place of voting.* The ASCS county office serving the county in which the producer's farm is located shall be his polling place.

(b) *Register of eligible voters.* The county committee shall establish a register of known eligible voters prior to the referendum.

(c) *Mailing of ballot to eligible voters.* The county committee shall furnish each eligible voter a ballot suitable for mailing back to the office of the county committee. If an eligible voter does not receive a ballot, one may be obtained during the referendum period from the office of the county committee for the county in which the voter is eligible.

(d) *Returning ballot to office of the county committee.* Each person to whom a ballot is issued by mail or in person may vote in the referendum by completing and signing the ballot, placing it in an envelope, and delivering or mailing it to the office of the county committee for the county in which the voter is eligible to vote. In order to be eligible for tabulation by the county committee, voted ballots must be received by the county committee of the county in which the voter is eligible to vote during the period established for holding the referendum. A ballot shall be considered to have been received during the referendum period if (1) in the case of the ballot delivered to the county committee, it was received in the office prior to the close of the work day on the final day of the referendum period, or (2) in the case of a mailed ballot, it was postmarked not later than midnight of the final day of the referendum period and was received in the county office prior to the start of canvassing the ballots.

(e) *Placing of ballots in ballot box.* Notwithstanding the fact that a ballot(s) may be later challenged by the county committee, envelopes containing ballots received at the ASCS county office during the referendum period shall remain unopened and shall be placed immediately in a ballot box provided by the county executive director. Such ballot box shall be arranged so that ballots cannot be read or moved without breaking the seal on the container.

[31 FR 14438, Oct. 9, 1966, as amended at 41 FR 51030, Nov. 19, 1976; 50 FR 10931, Mar. 19, 1985]

§ 1205.205 Canvass of ballots.

(a) *Canvassing procedure.* Canvassing of returned ballots shall take place as soon as possible after the opening of the county office on the fifth day following the close of the referendum period. Such canvassing shall be in the presence of at least a member of the county committee and shall be open to the public. The canvassing and ballots shall be handled in such a manner that no member of the public may see how any person voted in the referendum. The county committee member shall supervise the opening of the sealed ballot box, the opening of the envelopes containing the ballots and a determination as to (1) the number of eligible voters favoring the order and, where necessary, the amount of upland cotton represented by them, (2) the number of eligible voters disapproving the order and, where necessary, the amount of upland cotton represented by them, (3) the number of ballots cast by voters found to be ineligible to vote in the referendum, and (4) number of spoiled ballots. The ballots determined to be spoiled or cast by ineligible voters shall not be considered as approving or disapproving the order, and the persons who cast such ballots shall not be regarded as participating in the referendum.

(b) *Spoiled ballots.* A ballot shall be considered as a spoiled ballot if (1) it is mutilated or marked in such a way that it is not possible to determine with certainty how the ballot was intended to be counted, or (2) it does not contain the signature of the voter, or the voter's properly witnessed mark.

(c) *Challenge of ballots.* A ballot may be challenged by the member of the county committee. Before a challenged ballot is either counted or declared invalid, a determination shall be made by the county committee member as to the eligibility of the voter to vote in the referendum.

[31 FR 14438, Oct. 9, 1966, as amended at 41 FR 51030, Nov. 19, 1976; 50 FR 10932, Mar. 19, 1985]

§ 1205.206 Reporting results of referendum.

(a) Each county committee shall transmit a written county summary of ballots showing the results of the referendum in its county to its State committee.

(b) Each State committee shall transmit a written summary of the referendum results from the county committees within its State to the Director, Cotton Division, Agricultural Marketing Service, Washington, DC 20250, and maintain one copy of the summary in the office of the State committee where it will be available for public inspection for a period of 5 years following the end of the referendum period.

(c) The Director of the Cotton Division shall prepare and submit to the Secretary a report as to the results of the referendum. The Secretary shall then publicly proclaim the results of the referendum.

[31 FR 14438, Oct. 9, 1966, as amended at 41 FR 37092, Sept. 2, 1976]

§ 1205.207 Challenge of correctness of county summary of ballots.

The State committee shall make a prompt investigation and decision in case of any dispute or challenge regarding the correctness of the county summary of ballots in any county: *Provided,* That no dispute or challenge shall be investigated unless it is brought to the attention of the State committee within 3 days after receipt by the State committee of the county summary of ballots from such county.

§ 1205.208 Disposition of ballots and records by county committee.

The county committee shall seal the voted ballots, challenged ballots found to be ineligible, spoiled ballots, register sheets, and summary sheets for the county in one or more envelopes or packages, plainly marked with the identification of the referendum, the date, and the names of the county and State, and place them under lock and key in a safe place under the custody of the county executive director for a period of 45 calendar days after the referendum period. If no notice to the contrary is received by the end of such time, and after the ballots and other records have been examined by a representative of the State committee, the voted ballots and challenged ballots shall be destroyed, but the registers and county summary sheets shall be filed for a period of 5 years in the office of the county committee.

[31 FR 14438, Oct. 9, 1966, as amended at 41 FR 51030, Nov. 19, 1976]

§ 1205.209 Confidential information.

All ballots cast and the contents thereof shall be treated as confidential.

§ 1205.210 Additional instructions and forms.

The Deputy Administrator is hereby authorized to prescribe additional instructions and forms not inconsistent with the provisions of this subpart for the use of State and county committees in conducting a referendum. Such additional instructions may include procedures for county and State committees to report and announce the results of the preliminary count of the votes in the county and the State.

Subpart—Cotton Research and Promotion Order

SOURCE: 31 FR 16758, Dec. 31, 1966, unless otherwise noted.

DEFINITIONS

§ 1205.301 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the U.S. Department of Agriculture to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

§ 1205.302 Act.

"Act" means the Cotton Research and Promotion Act, as amended (80 Stat. 279 *et seq.*, 90 Stat. 991; 7 U.S.C. 2101-2118).

[42 FR 4813, Jan. 26, 1977]

§ 1205.303 Person.

"Person" means any individual, partnership, corporation, association, or any other entity.

§ 1205.304 Cotton.

"Cotton" means all upland cotton harvested in the United States, and except as used in §§ 1205.308, 1205.331, and 1205.332, includes cottonseed of such cotton and the products derived from such cotton and its seed.

§ 1205.305 Fiscal period.

"Fiscal period" is the 12-month budgetary period and means the calendar year unless the Cotton Board, with the approval of the Secretary, selects some other 12-months budgetary period.

§ 1205.306 Cotton Board.

"Cotton Board" means the administrative body established pursuant to § 1205.318.

§ 1205.307 Producer.

"Producer" means any person who shares in a cotton crop actually harvested on a farm, or in the proceeds thereof, as an owner of the farm, cash tenant, landlord of a share tenant, share tenant, or sharecropper.

§ 1205.308 Handler.

"Handler" means any person who handles cotton, including the Commodity Credit Corporation.

§ 1205.309 Handle.

"Handle" means to harvest, gin, warehouse, compress, purchase, market, transport, or otherwise acquire ownership or control of cotton.

§ 1205.310 United States.

"United States" means the 50 States of the United States of America.

§ 1205.311 Cotton-producing State

"Cotton-producing State" means each of the following States and combinations of States:

Alabama-Florida; Arizona; Arkansas; California-Nevada; Georgia; Louisiana; Mississippi; Missouri-Illinois; New Mexico; North Carolina-Virginia; Oklahoma; South Carolina; Tennessee-Kentucky; Texas.

§ 1205.312 Marketing.

"Marketing" includes the sale of cotton or the pledging of cotton to the Commodity Credit Corporation as collateral for a price support loan.

§ 1205.313 Cotton-producer organization.

"Cotton-producer organization" means any organization which has been certified by the Secretary pursuant to § 1205.337.

§ 1205.314 Contracting organization or association.

"Contracting organization or association" means the organization or association with which the Cotton Board has entered into a contract or agreement pursuant to § 1205.328(c).

§ 1205.315 Cotton-producing region.

"Cotton-producing region" means each of the following groups of cotton-producing States:

(a) Southeast Region: Alabama-Florida, Georgia, North Carolina-Virginia, and South Carolina;

(b) Midsouth Region: Arkansas, Louisiana, Mississippi, Missouri-Illinois, and Tennessee-Kentucky;

(c) Southwest Region: Oklahoma and Texas;

(d) Western Region: Arizona, California-Nevada, and New Mexico.

§ 1205.316 Marketing year.

"Marketing year" means a consecutive 12-month period ending on July 31.

§ 1205.317 Part and subpart.

"Part" means the cotton research and promotion order and all rules, regulations and supplemental orders issued pursuant to the act and the order, and the aforesaid order shall be a "subpart" of such part.

COTTON BOARD

§ 1205.318 Establishment and membership.

There is hereby established a Cotton Board composed of representatives of cotton producers, each of whom shall have an alternate, selected by the Secretary from nominations submitted by eligible producer organizations within a cotton-producing State, as certified pursuant to § 1205.337, or, if the Secretary determines that a substantial number of producers are not members of or their interests are not represented by any such eligible producer organizations, from nominations made by producers in the manner authorized by the Secretary. Each cotton-producing State shall be represented by at least one member and by an additional member for each 1 million bales or major fraction (more than one-half) thereof of cotton produced in the State and marketed above 1 million bales during the period specified in the regulations for determining Board membership.

§ 1205.319 Term of office.

The members of the Board and their alternates shall serve for terms of 3 years, but the initial members and alternates shall be selected to represent the cotton-producing States in each of the cotton-producing regions for terms expiring on December 31, 1968, 1969, or 1970, so that, as nearly as practicable, the terms of one-third of the members and their alternates from cotton-producing States in any such region expire each year. Each member and alternate member shall continue to serve until his successor is selected and has qualified.

§ 1205.320 Nominations.

All nominations authorized under § 1205.318 shall be made within such period of time and in such manner as the Secretary shall prescribe. The eligible producer organizations within each cotton-producing State, as certified pursuant to § 1205.337, shall caucus for the purpose of jointly nominating two qualified persons for each member and for each alternate member to be selected to represent the cotton producers of such cotton-producing State. If joint agreement is not reached with respect to the nominees for any such position each such organization may nominate two qualified persons for any position on which there was no agreement.

§ 1205.321 Selection.

From the nominations made pursuant to §§ 1205.318 and 1205.320 the Secretary shall select the members of the Board and an alternate for each such member on the basis of the representation provided for in §§ 1205.318 and 1205.319.

§ 1205.322 Acceptance.

Any person selected by the Secretary as a member or as an alternate member of the Board shall qualify by filing a written acceptance with the Secretary promptly after being notified of such selection.

§ 1205.323 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate member of the Board to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the Board, a successor for the unexpired term of such member or alternate member of the Board shall be nominated and selected in the manner specified in §§ 1205.318, 1205.320, and 1205.321.

§ 1205.324 Alternate members.

An alternate member of the Board, during the absence of the member for whom he is the alternate, shall act in the place and stead of such member and perform such other duties as assigned. In the event of the death, removal, resignation, or disqualification of a member, his alternate shall act for him until a successor for such member is selected and qualified. In the event both a member of the Board and his alternate are unable to attend a Board meeting, the Board may designate any other alternate member from the same cotton-producing State or region to serve in such member's place and stead at such meeting.

§ 1205.325 Procedure.

A majority of the members of the Board, or alternates acting for members, shall constitute a quorum and any action of the Board shall require the concurring votes of at least a majority of those present and voting. At assembled meetings all votes shall be cast in person. For routine and noncontroversial matters which do not require deliberation and the exchange of views, and in matters of an emergency nature when there is not enough time to call an assembled meeting of the Board, the Board may also take action upon the concurring votes of a majority of its members by mail, telegraph or telephone, but any such action by telephone shall be confirmed promptly in writing.

§ 1205.326 Compensation and reimbursement.

The members of the Board, and alternates when acting as members, shall serve without compensation but shall be reimbursed for necessary expenses, as approved by the Board, incurred by them in the performance of their duties under this subpart.

§ 1205.327 Powers.

The Board shall have the following powers:

(a) To administer the provisions of this subpart in accordance with its terms and provisions;

(b) Subject to the approval of the Secretary, to make rules and regulations to effectuate the terms and provisions of this subpart including the designation of the handler responsible for collecting the producer assessments authorized by § 1205.331, which designation may be of different handlers or classes of handlers to recognize differences in marketing practices in any State or area;

(c) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this subpart;

(d) To recommend to the Secretary amendments to this subpart.

[31 FR 16758, Dec. 31, 1966, as amended at 42 FR 4813, Jan. 26, 1977]

§ 1205.328 Duties.

The Board shall have the following duties:

(a) To select from among its members a chairman and such other officers as may be necessary for the conduct of its business, and to define their duties;

(b) To appoint or employ such persons as it may deem necessary and to determine the compensation and to define the duties of each;

(c) With the approval of the Secretary, to enter into contracts or agreements for the development and submission to it of research and promotion plans or projects authorized by § 1205.329, and for the carrying out of such plans or projects when approved by the Secretary, and for the payment of the costs thereof with funds collected pursuant to § 1205.331, with an organization or association whose governing body consists of cotton producers selected by the cotton producer organizations certified by the Secretary under § 1205.337, in such manner that the producers of each cotton-producing State will, to the extent practicable, have representation on the governing body of such organization in the proportion that the cotton marketed by the producers of such State bears to the total cotton marketed by the producers of all cotton-producing States, subject to adjustments to reflect lack of participation in the program by reason of refunds under § 1205.332. Any such contract or agreement shall provide that such contracting organization or association shall develop and submit annually to the Cotton Board, for the purpose of review and making recommendations to the Secretary, a program of research, advertising, and sales promotion projects, together with a budget, or budgets, which shall show the estimated cost to be incurred for such projects, and that any such projects shall become effective upon approval by the Secretary. Any such contract or agreement shall also provide that the contracting organization shall keep accurate records of all its transactions, which shall be available to the Secretary and Board on demand, and make an annual report to the Cotton Board of activities carried out and an accounting for funds received and expended, and such other reports as the Secretary may require;

(d) To review and submit to the Secretary any research and promotion plans or projects which have been developed and submitted to it by the contracting organization or association, together with its recommendations with respect to the approval thereof by the Secretary;

(e) To submit to the Secretary for his approval budgets on a fiscal period basis of its anticipated expenses and disbursements in the administration of this subpart, including probable costs of advertising and promotion and research and development projects as estimated in the budget or budgets submitted to it by the contracting organization or association, with the Board's recommendations with respect thereto;

(f) To maintain such books and records and prepare and submit such reports from time to time to the Secretary as he may prescribe, and to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it;

(g) To cause its books to be audited by a competent public accountant at least once each fiscal period and at such other times as the Secretary may request, and to submit a copy of each such audit to the Secretary;

(h) To give the Secretary the same notice of meetings of the Board as is given to members in order that his representative may attend such meetings;

(i) To act as intermediary between the Secretary and any producer or handler;

(j) To submit to the Secretary such information as he may request.

RESEARCH AND PROMOTION

§ 1205.329 Research and promotion.

The Cotton Board shall in the manner prescribed in § 1205.328(c) establish or provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate plans or projects for the advertising and sales promotion of cotton and its products, which plans or projects shall be directed toward increasing the general demand for cotton or its products in accordance with section 6(a) of the act;

(b) The establishment and carrying on of research and development projects and studies with respect to the production, ginning, processing, distribution, or utilization of cotton and its products in accordance with section 6(b) of the act, to the end that the marketing and utilization of cotton may be encouraged, expanded, improved, or made more efficient.

EXPENSES AND ASSESSMENTS

§ 1205.330 Expenses.

(a) The Board is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by the Board for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart.

(b) The Board shall reimburse the Secretary (1) for expenses up to $200,000 incurred by him in connection with any referendum conducted under the Act and (2) for expenses incurred by the Department of Agriculture for administrative and supervisory costs up to five employee years annually.

(c) The funds to cover such expenses incurred under paragraphs (a) and (b) of this section shall be paid from assessments received pursuant to § 1205.331.

[42 FR 4813, Jan. 26, 1977]

§ 1205.331 Assessments.

Each cotton producer or other person for whom cotton is being handled shall pay to the handler thereof designated by the Cotton Board pursuant to regulations issued by the Board and such handler shall collect from the producer or other person for whom the cotton, including cotton owned by the handler, is being handled, and shall pay to the Cotton Board, at such times and in such manner as prescribed by regulations issued by the Board, assessments as prescribed in paragraphs (a) and (b) of this section to be used for such expenses and expenditures, including provision for a reasonable reserve, as the Secretary finds are reasonable and likely to be incurred by the Cotton Board and the Secretary under this subpart:

(a) An assessment at the rate of $1 per bale of cotton handled.

(b) A supplemental assessment on cotton handled which shall not exceed one percent of the value of such cotton as determined by the Cotton Board and approved by the Secretary and published in Cotton Board rules and regulations. For the 1977 and subsequent crops of cotton this supplemental assessment shall be at the rate of four tenths of one percent of the value of cotton: *Provided*, That for any crop of cotton, beginning with the 1978 crop, the rate of the supplemental assessment may be increased or decreased by the Cotton Board with the approval of the Secretary. The Secretary shall prescribe by regulation whether the assessment rate shall be levied on (1) the current value of cotton, or (2) an average value determined from current and/or historical cotton prices and converted to a fixed amount for each bale.

[42 FR 4813, Jan. 26, 1977]

§ 1205.332 Producer refunds.

Any cotton producer against whose cotton any assessment is made under the authority of the act and collected from him and who is not in favor of supporting the research and promotion program as provided for in this subpart shall have the right to demand and receive from the Cotton Board a refund of such assessment upon submission of proof satisfactory to the Board that the producer paid the assessment for which refund is sought. Any such demand shall be made personally by such producer in accordance with regulations and on a form and within a time period prescribed by the Board and approved by the Secretary. Such time period shall give the producer at least 90 days from the date of collection to submit the refund form to the Board. Any such refund shall be made within 60 days after demand therefor.

§ 1205.333 Influencing governmental action.

No funds collected by the Board under this subpart shall in any manner be used for the purpose of influencing governmental policy or action except in recommending to the Secretary amendments to this subpart.

REPORTS, BOOKS, AND RECORDS

§ 1205.334 Reports.

Each handler subject to this subpart may be required to report to the Cotton Board periodically such information as is required by regulations, which information may include but not be limited to, the following:

(a) Number of bales handled;

(b) Number of bales on which an assessment was collected;

(c) Name and address of person from whom he has collected the assessments on each bale handled;

(d) Date collection was made on each bale handled.

[31 FR 16758, Dec. 31, 1966, as amended at 42 FR 4813, Jan. 26, 1977]

§ 1205.335 Books and records.

Each handler subject to this subpart shall maintain and make available for inspection by the Cotton Board and the Secretary such books and records as are necessary to carry out the provisions of this subpart and the regulations issued thereunder, including such records as are necessary to verify any reports required. Such records shall be retained for at least 2 years beyond the marketing year of their applicability.

§ 1205.336 Confidential treatment.

(a) All information obtained from such books, records, or reports shall be kept confidential by all officers and employees of the Department of Agriculture and of the Cotton Board, and only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary of Agriculture, or to which he or any officer of the United States is a party, and involving this subpart. Nothing in this § 1205.336 shall be deemed to prohibit (1) the issuance of general statements based upon the reports of a number of handlers subject to this subpart, which statements do not identify the information furnished by any person, or (2) the publication by direction of the Secretary, of the name of any person violating this subpart, together with a statement of the particular provisions of this subpart violated by such person.

(b) All information with respect to refunds made to individual producers shall be kept confidential by all officers and employees of the Department of Agriculture and of the Cotton Board.

CERTIFICATION OF COTTON PRODUCER ORGANIZATION

§ 1205.337 Certification of cotton producer organization.

Any cotton producer organization within a cotton-producing State may request the Secretary for certification of eligibility to participate in nominating members and alternate members to represent such State on the Cotton Board. Such eligibility shall be based in addition to other available information upon a factual report submitted by the organization which shall contain information deemed relevant and specified by the Secretary for the making of such determination, including the following:

(a) Geographic territory within the State covered by the organization's active membership;

(b) Nature and size of the organization's active membership in the State, proportion of total of such active membership accounted for by farmers, a map showing the cotton-producing counties in such State in which the organization has members, the volume of cotton produced in each such county, the number of cotton producers in each such county, and the size of the organization's active cotton producer membership in each such county;

(c) The extent to which the cotton producer membership of such organization is represented in setting the organization's policies;

(d) Evidence of stability and permanency of the organization;

(e) Sources from which the organization's operating funds are derived;

(f) Functions of the organization; and

(g) The organization's ability and willingness to further the aims and objectives of the act.

The primary consideration in determining the eligibility of an organization shall be whether its cotton farmer membership consists of a sufficiently large number of the cotton producers who produce a relatively significant volume of cotton to reasonably warrant its participation in the nomination of members for the Cotton Board. Any cotton producer organization found eligible by the Secretary under this § 1205.337 will be certified by the Secretary, and his determination as to eligibility is final.

MISCELLANEOUS

§ 1205.338 Suspension and termination.

(a) The Secretary will, whenever he finds that this subpart or any provision thereof obstructs or does not tend to effectuate the declared policy of the act, terminate or suspend the operation of this subpart or such provision.

(b) The Secretary may conduct a referendum at any time, and shall hold a referendum on request of 10 per centum or more of the number of cotton producers voting in the referendum approving this subpart, to determine whether cotton producers favor the termination or suspension of this subpart, and he shall suspend or terminate such subpart at the end of the marketing year whenever he determines that its suspension or termination is approved or favored by a majority of the producers of cotton voting in such referendum who, during a representative period determined by the Secretary, have been engaged in the production of cotton, and who produced more than 50 per centum of the volume of the cotton produced by the cotton producers voting in the referendum.

§ 1205.339 Proceedings after termination.

(a) Upon the termination of this subpart the Cotton Board shall recommend not more than five of its members to the Secretary to serve as trustees, for the purpose of liquidating the affairs of the Cotton Board. Such persons, upon designation by the Secretary, shall become trustees of all of the funds and property then in the possession or under control of the Board, including claims for any funds unpaid or property not delivered or any other claim existing at the time of such termination.

(b) The said trustees shall (1) continue in such capacity until discharged by the Secretary; (2) carry out the obligations of the Cotton Board under any contracts or agreements entered into by it pursuant to § 1205.328(c); (3) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to such person or persons as the Secretary may direct; and (4) upon the request of the Secretary execute such assignments or other instruments necessary or appropriate to vest in such person or persons full title and right to all of the funds, property, and claims vested in the Board or the trustees pursuant to this § 1205.339.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this § 1205.339 shall be subject to the same obligation imposed upon the Cotton Board and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be disposed of, to the extent practicable, in the interest of continuing one or more of the cotton research or promotion programs hitherto authorized.

§ 1205.340 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued thereunder, or (b) release or extinguish any violation of this subpart or any regulation issued thereunder, or (c) affect or impair any rights or remedies of the United States, or of the Secretary, or of any other person, with respect to any such violation.

§ 1205.341 Personal liability.

No member or alternate member of the Cotton Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member or alternate, except for acts of dishonesty or willful misconduct.

§ 1205.342 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances shall not be affected thereby.

Subpart—Members of Cotton Board

§ 1205.401 Definitions.

(a) *Cotton Division.* "Cotton Division" means the Cotton Division of the Agricultural Marketing Service of the U.S. Department of Agriculture.

(b) *Director.* "Director" means the Director of the Cotton Division.

[32 FR 1084, Jan. 31, 1967, as amended at 41 FR 37092, Sept. 2, 1976]

§ 1205.402 Determination of Cotton Board membership.

(a) In determining whether any cotton-producing State is entitled to be represented by more than one member of the Cotton Board pursuant to § 1205.318, average annual production of upland cotton in terms of 480-pound net weight bales for the five most recent marketing years shall be used as the criteria for determination of such additional members.

(b) All members appointed from a State shall be entitled to serve a full 3-year term even though it is determined in a subsequent year that a State should have fewer additional members by using the average production of the five most recent marketing years as specified in paragraph (a) of this section.

(c) Each year the Director shall, based on the average annual production of upland cotton in terms of 480-pound net weight bales for the five most recent marketing years, notify all certified cotton-producer organizations in each cotton-producing State of the number of vacancies to be filled on the Cotton Board.

[50 FR 10932, Mar. 19, 1985]

§ 1205.403 Nomination procedure.

(a) The Director shall notify all certified producer organizations within each cotton-producing State of the location, date, and time of the caucus of such organizations pursuant to § 1205.320 for the purposes of making nomination for members and alternate members of the Cotton Board. The Director will designate a representative from the Cotton Division to attend the caucus meeting in each State. Each eligible cotton-producer organization within each cotton-producing State shall be entitled to only one representative at the caucus for the purpose of nominating two qualified persons for each member and for each alternate member to be selected. Such representative shall be (1) a cotton producer and resident of such State, (2) an officer or member of the Board of Directors of such association, and (3) duly and unqualifiedly authorized in writing by such association to make nominations on its behalf. The representative of the Director designated to attend the caucus meeting in each State shall ascertain the qualifications and eligibility of each representative of a cotton-producer organization to participate in said meeting and to make nominations.

(b) Each caucus shall be conducted as follows:

(1) The representative from the Cotton Division shall act as temporary chairman and shall explain the procedure for nominations and the duties of the Cotton Board.

(2) The representatives in attendance from the certified cotton producer organizations shall then select a chairman and a secretary.

(3) At each caucus there shall be presented for nomination and there shall be nominated not less than the number of nominees required under the provisions of §§ 1205.318, 1205.320, and 1205.402.

[32 FR 1084, Jan. 31, 1967, as amended at 50 FR 10932, Mar. 19, 1985]

Subpart—Cotton Board Rules and Regulations

AUTHORITY: Sec. 15, 80 Stat. 285; 7 U.S.C. 2114.

SOURCE: 42 FR 35974, July 13, 1977, unless otherwise noted.

DEFINITIONS

§ 1205.500 Terms defined.

As used throughout this subpart, unless the context otherwise requires, the following terms shall mean:

(a) "ASCS" means the Agricultural Stabilization and Conservation Service of the U.S. Department of Agriculture.

(b) "Cotton Board" means the administrative body established pursuant to the Cotton Research and Promotion Order.

(c) "CCC" means the Commodity Credit Corporation.

(d) "Current value of Cotton" means the gross price per pound of lint cotton received by the producer for cotton as shown on the producers' settlement document before deductions are made for weight penalties, buyer's commission or brokerage fees, marketing fees, the $1 per bale cotton research and promotion assessment, picking charges, ginning charges, warehouse receiving charges, warehouse storage charges, transportation charges or any other charges, plus any amount received by a producer in the form of a loan deficiency payment with respect to such cotton.

(e) "Form A" means Cotton Producer's Note, Form CCC Cotton A.

(f) "Gin code number" means the identification number assigned to each cotton gin by the Cotton Division, Agricultural Marketing Service, U.S. Department of Agriculture.

(g) "Handle" means to harvest, gin, warehouse, compress, purchase, market, transport, or otherwise acquire ownership or control of cotton.

(h) "Handler" means any person who handles cotton, including CCC.

(i) "Marketing" means any sale of cotton, or the pledging of cotton to CCC as collateral for a price support loan.

(j) "Marketing year" means a consecutive 12-month period ending on July 31.

(k) "Person" means any individual, partnership, corporation, association, or any other entity, whether governmental or private.

(l) "Producer" means any person who owns or shares in a cotton crop (or in the proceeds thereof) as landowner, landlord, tenant, or sharecropper.

(m) "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the U.S. Department of Agriculture to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

(n) "Loan deficiency payment" means any payment on Upland cotton made by the Commodity Credit Corporation to a producer in accordance with 7 CFR 713.55.

[42 FR 35974, July 13, 1977, as amended at 50 FR 10932, Mar. 19, 1985; 51 FR 6098, Feb. 20, 1986; 51 FR 37705, Oct. 24, 1986]

GENERAL

§ 1205.505 Communication.

All reports, requests, and applications for refunds and communications in connection with the cotton research and promotion order shall be addressed as follows: Cotton Board, Post Office Box 2121, Memphis, Tenn. 38159.

ASSESSMENTS

§ 1205.510 Levy of assessment.

(a) An assessment of $1 per bale for cotton research and promotion is hereby levied on each bale of upland cotton that is produced from cotton harvested and ginned on and after June 10, 1967 except cotton consumed by any governmental agency from its own production. Such assessment shall be payable and collected only once on each bale.

(b) A supplemental assessment for cotton research and promotion in addition to the $1 per bale assessment provided in paragraph (a) of this section, is hereby levied on each bale of upland cotton harvested and ginned on and after July 24, 1985 except cotton consumed by any governmental agency from its own production. The supplemental assessment shall be levied at the rate of six-tenths of one percent of:

(1) The current value of cotton multiplied by the number of pounds of lint cotton or

(2) The current value of cotton converted to a fixed amount per bale as reflected in the following assessment chart:

ASSESSMENT CHART [1]

Current value (cents per pound)	*Supplemental assessment, dollars per bale*
.00 to 9.99	.15
10.00 to 19.99	45
20.00 to 29.99	.75
30.00 to 39.99	1.05
40.00 to 49.99	1.35
50.00 to 59.99	1.65
60.00 to 69.99	1.95
70.00 to 79.99	2.25
80.00 to 89.99	2.55
90.00 to 99.99	2.85
100.00 to 109.99	3.15
110.00 to 119.99	3.45

[1] Assessment is calculated on $^{6}/_{10}$ of 1 percent of the midpoint of each 10¢ increment, based on a

500 lb bale and converted to a fixed amount per bale.

(c) Each marketing year the collecting handler must select one of the two options of collecting the supplemental assessment as provided in paragraph (b) of this section. The handler shall notify the Cotton Board as to the method selected at the time the handler files the first handler report each marketing year.

[42 FR 35974, July 31, 1977, as amended at 50 FR 10932, Mar. 19, 1985; 50 FR 30133, July 24, 1985]

§ 1205.511 Payment and collection.

(a) The $1 per bale assessment shall be paid by the producer of the cotton to the collecting handler designated in § 1205.512.

(b) The supplemental assessment shall be paid by the producer of the cotton to the collecting handler designated in § 1205.513.

(c) If more than one producer shares in the proceeds received from a bale, each such producer is obligated to pay that portion of the assessments which are equivalent to their proportionate share of the proceeds.

(d) Failure of the handler to collect the assessments on each bale shall not relieve the handler of the handler's obligation to remit the assessments to the Cotton Board as required in §§ 1205.512, 1205.513 and 1205.514.

[42 FR 35974, July 31, 1977, as amended at 50 FR 10932, Mar. 19, 1985]

§ 1205.512 Collecting handlers and time of collection of $1 per bale assessment.

Collecting handlers and the time of collecting the $1 per bale assessment shall be as follows:

(a) Except as provided in paragraph (b) of this section, any person who purchases a bale of cotton from the producer of the cotton shall be the collecting handler for such cotton. The handler shall collect the assessment at the time the handler first makes any payment or any credit to the producer's account for the cotton. The handler shall give the producer a receipt indicating payment of the assessment.

(b) Any cooperative marketing association or other person that accepts a bale of cotton from the producer of the cotton under an oral or written contract or agreement providing for the marketing of the cotton shall be the collecting handler for such cotton. Such association or person shall collect the assessment regardless of whether the cotton is marketed or tendered to CCC for price support loan. The handler shall collect the assessment at the time the handler first makes any cash advance, any payment, or any credit to the producer's account for the cotton. The handler shall give the producer a receipt indicating payment of the assessment.

(c) For bales of cotton tendered to CCC for Form A loan, except bales tendered pursuant to paragraph (b) of this section:

(1) The ASCS County Office shall be the collecting handler except as provided in paragraph (c)(2) of this section. The ASCS County Office shall collect the assessment when it makes disbursement based on the Form A loan documents. The producer's copy of the Cotton Producer's Note (Form CCC Cotton A) shall show payment of the assessment and shall constitute the producer's receipt for payment of the assessment.

(2) Any person (other than an ASCS County Office) who advances to the producer the loan value of the cotton as shown on a Cotton Producer's Note (Form CCC Cotton A) shall be the collecting handler for such cotton. The handler shall collect the $1 per bale assessment at the time the handler makes any advance to the producer on the loan value of the cotton. The handler shall give the producer a receipt indicating payment of the assessment.

(d) Any person who purchases cotton in the cotton field where produced or who purchases seed cotton or unbaled lint cotton from the producer of the cotton shall be the collecting handler. The handler shall collect the assessment at the time such cotton is ginned and shall give the producer a receipt indicating payment of the assessment. When a bale is ginned that contains any such cotton purchased from more than one producer, the handler shall collect each producer's proportionate share of the assessment and shall give each producer a receipt ndicating the producer's proportionate share of the assessment payment.

(e) Any person who purchases cotton from a producer whereby the producer agrees to deliver a certain quantity of cotton but retains the right to establish the price at some future date shall be the collecting handler for such cotton. The handler shall collect the $1 per bale assessment at the time final settlement is made on the cotton. The handler shall give the producer a receipt indicating payment of the $1 per bale assessment.

(f) Any person who consumes domestically or exports cotton of that person's own production shall be the collecting handler for such cotton. Such handler shall pay the assessment to the Cotton Board at the time the cotton is consumed or exported.

(g) Any person who obtains ownership of a bale of cotton from the producer of the cotton by transfer of any kind or by any means, under conditions other than those described in paragraph (a), (b), (c), (d) or (e) of this section shall be the collecting handler for such cotton. Such handler shall collect the assessment at the time such handler takes ownership of the cotton. The handler shall give the producer a receipt indicating payment of the assessment.

(h) In the event of a producer's death, bankruptcy, receivership, or incapacity to act, the representative of the producer, or his estate, or the person acting on behalf of creditors, shall be considered the producer of the cotton for the purposes of this section and § 1205.520.

[42 FR 35974, July 31, 1977, as amended at 50 FR 10932, Mar. 19, 1985]

§ 1205.513 Collecting handlers and time of collection of the supplemental assessment.

Collecting handlers and the time of collecting the supplemental assessment shall be as follows:

(a) Except as provided in paragraph (b) of this section, any person who purchases a bale of cotton from the producer of the cotton shall be the collecting handler for such cotton. The handler shall collect the supplemental assessment at the time the handler first makes any payment or any credit to the producer's account for the cotton. The handler shall give the producer a receipt indicating payment of the supplemental assessment.

(b) Any cooperative marketing association or other person that accepts a bale of cotton from the producer of the cotton under an oral or written contract or agreement providing for the marketing of the cotton shall be the collecting handler for such cotton. Such association or person shall collect the supplemental assessment regardless of whether the cotton is marketed or tendered to CCC for price support loan. The handler shall collect the supplemental assessment at the time the handler first makes any cash advance, any payment, or any credit to the producer's account for the cotton. Supplemental assessments due on any subsequent cash advances, payments, or credits to the producer's account shall be collected by the handler at the time final settlement is made on the cotton. The handler shall give the producer a receipt each time a supplemental assessment is collected.

(c) For bales of cotton tendered to CCC for Form A loan, except bales tendered pursuant to paragraph (b) of this section:

(1) The ASCS County Office shall be the collecting handler except as provided in paragraph (c)(2) of this section. The ASCS County Office shall collect the supplemental assessment when it makes disbursement based on the Form A loan value of cotton. The producer's copy of the Cotton Producer's Note (Form CCC Cotton A) shall show payment of the supplemental assessment and shall constitute the producer's receipt for payment of the supplemental assessment.

(2) Any person (other than an ASCS County Office) who advances to the producer the loan value of the cotton as shown on a Cotton Producer's Note (Form CCC Cotton A) shall be the collecting handler for such cotton. The handler shall collect the supplemental assessment at the time the handler makes any advance to the producer on the loan value of the cotton. The handler shall give the producer a receipt indicating payment of the supplemental assessment.

(d) With respect to any Upland cotton on which the producer or a cooperative marketing association acting on behalf of a producer receives a loan deficiency payment, the ASCS County Office or the cooperative marketing association shall be the collecting handler of the supplemental assessment on the value of the cotton represented by the loan deficiency payment at the time such payment is made to the producer or the cooperative marketing association. A copy of a document reflecting this transaction issued by the ASCS County Office or cooperative marketing association shall show the amount collected as the supplemental assessment and shall constitute the producer's receipt for payment of the supplemental assessment.

(e) Any person who (1) purchases a producer's equity in cotton tendered to CCC for Form A loan or (2) purchases cotton that a producer has redeemed from the Form A loan, shall be the collecting handler for the portion of the total supplemental assessment not collected under paragraph (c) of this section. The handler shall give the producer a receipt indicating payment of that portion of the supplemental assessment.

(f) Any person who purchases cotton in the cotton field where produced or who purchases seed cotton or unbaled lint cotton from the producer of the cotton shall be the collecting handler. The handler shall collect the supplemental assessment at the time such cotton is ginned and shall give the producer a receipt indicating payment of the supplemental assessment. When a bale is ginned and baled that contains any such cotton purchased from more than one producer, the handler shall collect each producer's proportionate share of the supplemental assessment and shall give each producer a receipt indicating the producer's proportionate share of the supplemental assessment payment.

(g) Any person who purchases cotton from a producer whereby the producer agrees to deliver a certain quantity of cotton but retains the right to establish the price at some future date shall be the collecting handler for such cotton. The handler shall collect the supplemental assessment at the time final settlement is made on the cotton. The handler shall give the producer a receipt indicating payment of the supplemental assessment.

(h) Any person who consumes domestically cotton of that person's own production shall be the collecting handler for such cotton. The handler shall pay the supplemental assessment at the time of consumption on the basis of a market value determined in consultation with the Cotton Board.

(i) Any person who exports cotton of that person's own production shall be the collecting handler for such cotton. Such handler shall pay the supplemental assessment on the basis of the current value of cotton as reflected on the export settlement document.

(j) Any person who obtains ownership of a bale of cotton from the producer of the cotton by transfer of any kind or by any means, under conditions other than those described in paragraph (a), (b), (c), (d), (e), or (f) of this section shall be the collecting handler for such cotton. Such handler shall collect the supplemental assessment at the time the handler takes ownership of the cotton. The handler shall give the producer a receipt indicating payment of the supplemental assessment.

(k) In the event of a producer's death, bankruptcy, receivership, or incapacity to act, the representative of the producer, or the producer's estate, or the person acting on behalf of creditors, shall be considered the producer of the cotton for the purposes of this section and § 1205.520.

[42 FR 35974, July 31, 1977, as amended at 50 FR 10932, Mar. 19, 1985; 51 FR 37705, Oct. 24, 1986]

§ 1205.514 Reports and remittance to Cotton Board.

Each collecting handler shall transmit assessments and reports to the Cotton Board as follows:

(a) *Reporting periods.* Each calender month shall be a reporting period and the period shall end at the close of business on the last day of the month.

(b) *Reports.* Each collecting handler shall make reports on forms made available or approved by the Cotton

Board. Each report shall be mailed to the Cotton Board and postmarked within 10 days after the close of the reporting period.

(1) *Collecting handler report.* Each collecting handler shall prepare a separate report form each reporting period for each gin from which such handler handles cotton on which the handler is required to collect the assessments during the reporting period. Each report shall be mailed in duplicate to the Cotton Board and shall contain the following information:

(i) Date of report.

(ii) Reporting period covered by report.

(iii) Gin code number.

(iv) Name and address of handler.

(v) Listing of all producers from whom the handler was required to collect the assessments, their addresses, total number of bales, and total assessments collected and remitted for each producer.

(vi) Date of last report remitting assessments to the Cotton Board.

(2) *No cotton purchased report.* Each collecting handler shall submit a no cotton purchased report form for each reporting period in which no cotton was handled for which the handler is required to collect assessments during the reporting period. A collecting handler who handles cotton only during certain months shall file a final no cotton purchased report at the conclusion of his/her marketing season. If a collecting handler handles cotton during any month following submission of the final report for his/her marketing season, such handler shall send a collecting handler report and remittance to the Cotton Board by the 10th day of the month following the month in which cotton was handled. The no cotton purchased report shall be signed and dated by the handler or the handler's agent.

(c) *Remittances.* The collecting handler shall remit all assessments to the Cotton Board with the report required in paragraph (b) of this section. All remittances sent to the Cotton Board by collecting handlers shall be by check, draft, or money order payable to the order of the "Cotton Board". All remittances shall be received subject to collection and payment at par.

(d) *Interest and late payment charges.* (1) There shall be an interest charge, at rates prescribed by the Cotton Board with the approval of the Secretary, on any handler failing to remit assessments to the Cotton Board when due.

(2) In addition to the interest charge specified in paragraph (d)(1) of this section, there shall be a late payment charge on any handler whose remittance has not been received by the Cotton Board within 10 days after the close of the next reporting period. The late payment charge shall be 5 percent of the unpaid balance before interest charges have accrued.

(Approved by the Office of Management and Budget under control number 0581-0115)

[42 FR 35974, July 13, 1977, as amended at 49 FR 8420, Mar. 7, 1984; 51 FR 6098, Feb. 20, 1986]

§ 1205.515 Failure to report and remit.

Any collecting handler who fails to submit reports and remittances according to reporting periods and time schedules required in § 1205.514 shall be subject to appropriate action by the Cotton Board which may include one or more of the following actions:

(a) Audits of the collecting handler's books and records to determine the amount owed the Cotton Board.

(b) Require the establishment of an escrow account for the deposit of assessments collected. Frequency and schedule of deposits and withdrawals from the escrow account shall be determined by the Cotton Board with the approval of the Secretary.

(c) Referral to the Secretary for appropriate enforcement action.

[51 FR 6099, Feb. 20, 1986]

§ 1205.516 Receipts for payment of assessments.

Each collecting handler who is required by § 1205.512 and § 1205.513 to give the producer a receipt showing payment of cotton research and promotion assessments shall provide the producer with an invoice or settlement sheet for the cotton. Such document shall serve as a receipt shall contain the following information:

(a) Name and address of collecting handler.

(b) Gin code number of gin at which cotton was ginned.

(c) Name and address of producer who paid assessment.

(d) Number of bales on which assessment was paid.

(e) Gross price per pound received by the producer.

(f) Total assessments paid by the producer.

(g) Date on which assessment was paid by producer.

(Approved by the Office of Management and Budget under control number 0581-0115)

[42 FR 35974, July 13, 1977, as amended at 49 FR 8420, Mar. 7, 1984. Redesignated and amended at 51 FR 6099, Feb. 20, 1986]

REFUNDS

§ 1205.520 Procedure for obtaining refund.

Each cotton producer against whose cotton any assessments are made and collected pursuant to this subpart may obtain a refund of such assessment only by following the procedures prescribed in this section.

(a) *Application form.* A producer shall obtain a refund application form from the Cotton Board. Such form may be obtained by written request to the Cotton Board and the request shall bear the producer's signature or the producer's properly-witnessed mark.

(b) *Submission of refund application to Cotton Board.* Any producer requesting a refund shall mail an application on the prescribed form to the Cotton Board. The application shall be postmarked within 90 days from the date the assessments were paid on the cotton by such producer. The refund application shall show:

(1) Producer's name and address;

(2) Collecting handler's name and address;

(3) Gin code number;

(4) Number of bales on which refund is requested;

(5) Total amount to be refunded;

(6) Date or inclusive dates on which assessments were paid; and

(7) The producer's signature or properly witnessed mark.

Where more than one producer shared in the assessment payment on cotton, joint or separate refund application forms may be filed. In any such case the refund application shall show the names, addresses and proportionate shares of all such producers. The refund application form shall bear the signature or properly witnessed mark of each producer seeking a refund.

(c) *Proof of payment of assessment.* The receipt given to the producer by the collecting handler, or a copy thereof, or such other evidence satisfactory to the Cotton Board, shall accompany the producer's refund application. Within 60 days from the date the properly-executed application for refund is received by the Cotton Board, the Cotton Board shall make remittance to the producer. For joint applications, the remittance shall be made payable jointly to all eligible producers signing the refund application form. Receipts submitted with refund applications shall not be returned to the producer.

[42 FR 35974, July 31, 1977, as amended at 50 FR 10933, Mar. 19, 1985; 51 FR 6099, Feb. 20, 1986]

WAREHOUSE RECEIPTS

§ 1205.525 Entry of gin code number.

For each bale of cotton ginned on or after June 10, 1967, the warehouse that first receives the bale for storage after ginning shall enter the gin code number of the gin at which the bale was ginned on the warehouse receipt issued for the bale.

REPORTS AND RECORDS

§ 1205.530 Gin reports and reporting schedule.

(a) *Gin reports.* Each year each cotton gin in the United States shall submit reports to the Cotton Board on forms or certificates made available or approved by the Cotton Board as follows:

(1) *End-of-season report.* Except as provided in paragraph (a)(2) of this section, each gin shall report to the Cotton Board an alphabetical listing of producer names, their addresses, and the number of bales ginned for

each such producer during its ginning season.

(2) *Certificate in lieu of end-of-season report.* If a gin is the collecting handler on every bale ginned at such gin and collecting handler reports and remittances of assessments have been made in accordance with § 1205.514, a certification to that effect may be made to the Cotton Board in lieu of an end-of-season report.

(b) *Reporting schedule.* The schedule for submitting gin reports is as follows:

(1) Each gin that completes ginning operations prior to January 16 shall make a report to the Cotton Board within 10 days after completion of ginning.

(2) Each gin that operates on or after January 16 will make a report to the Cotton Board not later than January 25 covering bales ginned through January 15.

(3) Each gin that operates after January 15 shall make a supplemental report to the Cotton Board within 10 days after the close of ginning operations covering bales ginned after January 15.

§ 1205.531 Records.

Each handler required to make reports pursuant to this subpart shall maintain such books and records as are necessary to verify the reports.

§ 1205.532 Retention period for reports and records.

Each handler required to make reports pursuant to this subpart shall retain for at least 2 years beyond the marketing year of their applicability:

(a) One copy of each report made to the Cotton Board; and

(b) Such books and records as are necessary to verify such reports.

§ 1205.533 Availability of reports and records.

Each handler required to make reports pursuant to this subpart shall make available for inspection by the Cotton Board, including its designated employees, and the Secretary any reports, books, or records required under this subpart.

CONFIDENTIAL INFORMATION

§ 1205.540 Confidential books, records, and reports.

All information obtained from the books, records, and reports of handlers and all information with respect to refunds of assessments made to individual producers shall be kept confidential in the manner and to the extent provided for in § 1205.336.[1]

Subpart—Fiscal Period [Reserved]

PART 1207—POTATO RESEARCH AND PROMOTION PLAN

Subpart—Procedure for the Conduct of Referenda in Connection With Potato Research and Promotion Plan

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[1] Section 1205.336 is contained in the Cotton Research and Promotion Order.

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AUTHORITY: Title III of Pub. L. 91-670; 84 Stat. 2041; 7 U.S.C. 2611-2627, as amended, unless otherwise noted.

Subpart—Procedure for the Conduct of Referenda in Connection With Potato Research and Promotion Plan

AUTHORITY: 84 Stat. 2041; 7 U.S.C. 608c.

SOURCE: 36 FR 25147, Dec. 29, 1971, unless otherwise noted.

§ 1207.200 General.

Referenda for the purpose of ascertaining whether the issuance by the Secretary of Agriculture of a potato research and promotion plan, or the continuance, termination or suspension of such a plan, is approved or favored by producers shall, unless supplemented or modified by the Secretary, be conducted in accordance with this subpart.

§ 1207.201 Definitions.

(a) "Act" means the Potato Research and Promotion Act, Title III of Pub. L. 91-670, 91st Congress, approved January 11, 1971 (84 Stat. 2041).

(b) "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead; and "Department" means the U.S. Department of Agriculture.

(c) "Administrator" means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in his stead.

(d) "Plan" means the plan (including an amendment to a plan) with respect to which the Secretary has directed that a referendum be conducted.

(e) "Referendum agent" means the individual or individuals designated by the Secretary to conduct the referendum.

(f) "Representative period" means the period designated by the Secretary pursuant to section 314 of the act.

(g) "Person" means any individual, partnership, corporation, association, or other business unit. For the purpose of this definition, the term "partnership" includes (1) a husband and wife who have title to, or leasehold interest in, land as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property, and (2) so-called "joint ventures," wherein one or more parties to the agreement, informal or otherwise, contributed capital and others contribute labor, management, equipment, or other services, or any variation of such contributions by two or more parties, so that it results in the growing of potatoes for market and the authority to transfer title to the potatoes so produced.

(h) "Producer" means any person defined as a producer in the plan, engaged in the growing of 5 or more acres of potatoes and who: (1) Owns and farms land, resulting in his ownership of the potatoes produced thereon; (2) rents and farms land, resulting in his ownership of all or a portion of the potatoes produced thereon; or (3) owns land which he does not farm and, as rental for such land, obtains the ownership of a portion of the potatoes produced thereon. Ownership of, or leasehold interest in, land and the acquisition, in any manner other than as hereinbefore set forth, of legal title to the potatoes grown thereon shall not be deemed to result in such owners or lessees becoming producers.

[36 FR 25147, Dec. 29, 1971, as amended at 37 FR 8059, Apr. 25, 1972]

§ 1207.202 Voting.

(a) Each person who is a producer, as defined in this subpart, at the time of the referendum and who also was a producer during the representative period, shall be entitled to only one vote in the referendum, except that in a land-lord-tenant relationship, wherein each of the parties is a producer, each such producer shall be entitled to one vote in the referendum.

(b) Proxy voting is not authorized but an officer or employee of a corporate producer, or an administrator, executor or trustee of a producing estate may cast a ballot on behalf of such producer or estate. Any individual so voting in a referendum shall certify that he is an officer or employee of the producer, or an administrator, executor, or trustee of a producing estate, and that he has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) Each producer shall be entitled to cast only one ballot in the referendum.

§ 1207.203 Instructions.

The referendum agent shall conduct the referendum, in the manner herein provided, under supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the time of commencement and termination of the period of the referendum, and the time prior to which all ballots must be cast.

(b) Determine whether ballots may be cast by mail, at polling places, at meetings of producers, or by any combination of the foregoing.

(c) Provide ballots and related material to be used in the referendum. Ballot material shall provide for recording essential information for ascertaining (1) whether the person voting, or on whose behalf the vote is cast, is an eligible voter, (2) the acreage of potatoes produced by the voting producer during the representative period, and (3) the total volume in hundredweight of potatoes produced during the representative period.

(d) Give reasonable advance notice of the referendum (1) by utilizing without advertising expense available media of public information (including, but not being limited to, press and radio facilities) serving the production area, announcing the dates, places, or methods of voting, eligibility requirements, and other pertinent information, and (2) by such other means as said agent may deem advisable.

(e) Make available to producers instructions on voting, appropriate ballot and certification forms, and, except in the case of a referendum on the termination or continuance of a plan, a summary of the terms and conditions of the plan: *Provided*, That no person who claims to be qualified to vote shall be refused a ballot.

(f) If ballots are to be cast by mail, cause all the material specified in paragraph (e) of this section to be mailed to each producer whose name and address is known to the referendum agent.

(g) If ballots are to be cast at polling places or meetings, determine the necessary number of polling or meeting places, designate them, announce the time of each meeting or the hours during which each polling will be open, provide the material specified in paragraph (e) of this section, and provide for appropriate custody of ballot forms and delivery to the referendum agent of ballots cast.

(h) At the conclusion of the referendum, canvass the ballots, tabulate the results, and, except as otherwise directed, report the outcome to the Administrator and promptly thereafter submit the following:

(1) All ballots received by the agent and appointees, together with a certificate to the effect that the ballots forwarded are all of the ballots cast and received by such persons during the referendum period;

(2) A list of all challenged ballots deemed to be invalid; and

(3) A tabulation of the results of the referendum and a report thereon, including a detailed statement explaining the method used in giving publicity to the referendum and showing other information pertinent to the manner in which the referendum was conducted.

§ 1207.204 Subagents.

The referendum agent may appoint any person or persons deemed necessary or desirable to assist said agent in performing his functions hereunder. Each person so appointed may be authorized by said agent to perform, in accordance with the requirements herein set forth, any or all of the following functions (which, in the absence of such appointment, shall be performed by said agent):

(a) Give public notice of the referendum in the manner specified herein;

(b) Preside at a meeting where ballots are to be cast or as poll officer at a polling place;

(c) Distribute ballots and the aforesaid texts to producers and receive any ballots which are cast; and

(d) Record the name and address of each person receiving a ballot from, or casting a ballot with, said subagent and inquire into the eligibility of such person to vote in the referendum.

§ 1207.205 Ballots.

The referendum agent and his appointees shall accept all ballots cast; but, should they, or any of them, deem that a ballot should be challenged for any reason, said agent or appointee shall endorse above his signature, on said ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefor, the results of any investigations made with respect thereto, and the disposition thereof. Invalid ballots shall not be counted.

§ 1207.206 Referendum report.

Except as otherwise directed, the Administrator shall prepare and submit to the Secretary a report on results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to analysis of the referendum and its results.

§ 1207.207 Confidential information.

All ballots cast and the contents thereof (whether or not relating to the identity of any person who voted or the manner in which any person voted) and all information furnished to, compiled by, or in possession of, the referendum agent shall be treated as confidential.

Subpart—Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Plans

AUTHORITY: 84 Stat. 2041; 7 U.S.C. 608c.

§ 1207.250 Words in the singular form.

Words in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

[36 FR 25148, Dec. 29, 1971]

§ 1207.251 Definitions.

As used in this subpart, the terms as defined in the act shall apply with equal force and effect. In addition unless the context otherwise requires:

(a) The term "act" means the Potato Research and Promotion Act, Pub. L. 91-670, 91st Congress, approved January 11, 1971 (84 Stat. 2041);

(b) The term "Department" means the U.S. Department of Agriculture;

(c) The term "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereinafter be delegated, to act in his stead;

(d) The term "administrative law judge" or "judge" means any administrative law judge, appointed pursuant to 5 U.S.C. 3105, and assigned to the proceeding involved;

(e) The term "Administrator" means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated, or to whom authority may hereafter be delegated, to act in his stead;

(f) The term FEDERAL REGISTER means the publication provided for by the act of July 26, 1935 (49 Stat. 500), and acts supplementary thereto and amendatory thereof;

(g) The term "plan" means any plan or any amendment thereto which may be issued pursuant to the act;

(h) The term "person" means any individual, partnership, corporation, association, or other entity subject to a plan or to whom a plan is sought to be made applicable, or on whom an obligation has been imposed or is sought to be imposed under a plan;

(i) The term "proceeding" means a proceeding before the Secretary arising under section 311(a) of the act;

(j) The term "hearing" means that part of the proceeding which involves the submission of evidence;

(k) The term "party" includes the Department;

(l) The term "hearing clerk" means the hearing clerk, U.S. Department of Agriculture, Washington, D.C.;

(m) [Reserved]

(n) The term "decision" means the judge's initial decision in proceedings subject to 5 U.S.C. 556 and 557, and includes the judge's (1) findings of fact and conclusions with respect to all material issues of fact, law or discretion as well as the reasons or basis thereof, (2) order, and (3) rulings on findings, conclusions and orders submitted by the parties;

(o) The term "petition" includes an amended petition.

[36 FR 25148, Dec. 29, 1971, as amended at 37 FR 8059, Apr. 25, 1972; 39 FR 786, Jan. 3, 1974]

§ 1207.252 Institution of proceeding.

(a) *Filing and service of petition.* Any person subject to a plan desiring to complain that any plan or any provision of any such plan or any obligation imposed in connection therewith is not in accordance with law, shall file with the hearing clerk, in quadruplicate, a petition in writing addressed to the Secretary. Promptly upon receipt of the petition, the hearing clerk shall transmit a true copy thereof to the Administrator and the General Counsel, respectively.

(b) *Contents of petition.* A petition shall contain:

(1) The correct name, address, and principal place of business of the petitioner. If petitioner is a corporation, such fact shall be stated, together with the name of the State of incorporation, the date of incorporation, and the names, addresses, and respective positions held by its officers; if an unincorporated association, the names

and addresses of its officers, and the respective positions held by them; if a partnership, the name and address of each partner;

(2) Reference to the specific terms or provisions of the plan, or the interpretation or application thereof, which are complained of;

(3) A full statement of the facts (avoiding a mere repetition of detailed evidence) upon which the petition is based, and which it is desired that the Secretary consider, setting forth clearly and concisely the nature of the petitioner's business and the manner in which petitioner claims to be affected by the terms or provisions of the plan or the interpretation or application thereof, which are complained of;

(4) A statement of the grounds on which the terms or provisions of the plan, or the interpretation or application thereof, which are complained of, are challenged as not in accordance with law;

(5) Prayers for the specific relief which the petitioner desires the Secretary to grant;

(6) An affidavit by the petitioner, or if the petitioner is not an individual, by an officer of the petitioner having knowledge of the facts stated in the petition, verifying the petition.

(c) *Further proceedings.* Further proceedings on petitions to modify or to be exempted from plans shall be governed by §§ 900.52(c) through 900.71 (excluding § 900.70) of this title (Rules of Practice Governing Proceedings on Petitions to Modify or To Be Exempted From Marketing Orders except that all references to marketing orders shall mean plan), and as may hereafter be amended, and the same are incorporated herein and make a part hereof by reference.

[36 FR 25148, Dec. 29, 1971, as amended at 39 FR 786, Jan. 3, 1974]

Subpart—Potato Research and Promotion Plan

SOURCE: 37 FR 5008, Mar. 9, 1972, unless otherwise noted.

DEFINITIONS

§ 1207.301 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

§ 1207.302 Act.

"Act" means the Potato Research and Promotion Act (title III of Pub. L. 91-670, 91st Congress, approved January 11, 1971, 84 Stat. 2041).

§ 1207.303 Plan.

"Plan" means this potato research and promotion plan issued by the Secretary pursuant to the act.

§ 1207.304 Person.

"Person" means any individual, partnership, corporation, association, or other entity.

§ 1207.305 Producer.

"Producer" means any person engaged in the growing of 5 or more acres of potatoes who owns or shares the ownership and risk of loss of such potato crop.

§ 1207.306 Potatoes.

"Potatoes" means any or all varieties of Irish potatoes grown by producers in the 48 contiguous States of the United States.

§ 1207.307 Handle.

"Handle" means to grade, pack, process, sell, transport, purchase, or in any other way to place potatoes or cause potatoes to be placed in the current of commerce. Such term shall not include the transportation or delivery of field-run potatoes by the producer thereof to a handler for grading, storage, or processing.

§ 1207.308 Handler.

"Handler" means any person (except a common or contract carrier of potatoes owned by another person) who handles potatoes, including a producer who handles potatoes of his own production.

207.309 Board.

'Board" means the National Potato
omotion Board, hereinafter estab-
hed pursuant to § 1207.320.

207.310 Fiscal period and marketing year.

Fiscal period" and "marketing
ar" mean the 12-month period from
ly 1 through June 30 of the follow-
year or such other period which
y be approved by the Secretary.

207.311 Programs and projects.

Programs" and "projects" mean
se research, development, advertis-
or promotion programs or projects
eloped by the Board pursuant to
207.335.

ATIONAL POTATO PROMOTION BOARD

07.320 Establishment and membership.

) There is hereby established a Na-
al Potato Promotion Board, here-
ter called the "Board," composed
roducers and the public as selected
the Secretary. The public repre-
ative to the Board shall be nomi-
ed by Board members in such
ner as recommended by the Board
approved by the Secretary. Pro-
r members shall be selected from
inations submitted by producers
he various States or groups of
es pursuant to § 1207.322.

Producer membership upon the
rd shall be determined on the basis
ne potato production reported in
latest Crop Production Annual
mary Report issued by the Crop
orting Board, U.S. Department of
culture. Unless the Secretary,
recommendation of the Board,
rmines an alternate basis, for each
million hundredweight of such
uction, or major fraction thereof,
uced within each State, such
shall be entitled to one member.
ever, each State shall initially be
led to at least one member.

Any State in which the potato
ucers fall to respond to an offi-
called nomination meeting may
ombined with an adjacent State
ne purpose of representation on
Board, in which case the Board
ber selected by the Secretary will
sent both States but his voting power under § 1207.325 shall not be increased.

(d) The Secretary, upon recommendation of the Board, may establish, through rule making procedure, districts or groups of States in order to change the representation requirements for membership on the Board. In such event the voting power of members under § 1207.325 would be based upon the total production within the new district or group of States.

(e) In the event that producer Board members fail to select a public representative nominee, the Secretary may appoint such a member.

[37 FR 5008, Mar. 9, 1972, as amended at 49 FR 20806, May 17, 1984; 49 FR 31390, Aug. 7, 1984]

§ 1207.321 Term of office.

(a) The term of office of Board members shall be 3 years, beginning July 1, or such other beginning date as may be approved pursuant to regulations.

(b) The terms of office of the Board's initial members shall be so determined that approximately one-third of the terms will expire each year, i.e., the terms of approximately one-third will be for 1 year, one-third for 2 years and one-third for 3 years.

(c) Board members shall serve during the term of office for which they are selected and have qualified, and until their successors are selected and have qualified.

(d) No member shall serve for more than two full successive terms.

§ 1207.322 Nominations and selection.

The Secretary shall select the producer members of the Board from nominations which may be made in the following manner.

(a) A meeting or meetings of producers shall be held in each State to nominate producer members for the Board. For nominations to the initial Board the meetings shall be announced by the U.S. Department of Agriculture. The Department may call upon other organizations to assist in conducting the meetings such as State and national organizations of potato producers. Such nomination meetings shall be held not later than 60 days after the issuance of this subpart. Any organization designated to hold such nomination meetings shall give adequate notice of such meetings to the potato producers affected; also to the Secretary so that a representative of the Secretary, if available, may conduct such meetings or act as secretary of such nomination meetings.

(b) After the establishment of the initial Board, the nominations for subsequent Board producer members shall be made by producers at meetings in the producing sections or States. The Board shall hold such meetings, or cause them to be held, in accordance with rules established pursuant to recommendation of the Board.

(c) Only producers may participate in designating producer nominees. Each producer is entitled to one vote only on behalf of himself, his partners, agents, subsidiaries, affiliates, and representatives for each position for which nominations are being held. If a producer is engaged in producing potatoes in more than one State, he shall elect the State in which he shall vote. In no event shall he vote in nominations in more than one meeting.

(d) The public member shall be nominated by the producer members of the Board. The public member shall have no direct financial interest in the commercial production or marketing of potatoes except as a consumer and shall not be a director, stockholder, officer or employee of any firm so engaged. The Board shall prescribe such additional qualifications, administrative rules and procedure for selection and voting for each candidate as it deems necessary and the Secretary approves.

[37 FR 5008, Mar. 9, 1972, as amended at 49 FR 20806, May 17, 1984]

§ 1207.323 Acceptance.

Each person selected by the Secretary as a member of the Board shall qualify by filing a written acceptance with the Secretary promptly after being notified of such selection.

§ 1207.324 Vacancies.

To fill any vacancy caused by the failure of any person selected as a member of the Board to qualify, or in the event of the death, removal, resignation, or disqualification of any member, a successor shall be nominated and selected in the manner specified in § 1207.322. In the event of failure to provide nominees for such vacancies, the Secretary may select other eligible persons.

§ 1207.325 Procedure.

(a) Each State (or district or group of States established pursuant to § 1207.320 (d)) which has a member on the Board shall be entitled to not less than one vote for any production up to 1 million hundredweight, plus one additional vote for each additional 1 million hundredweight of production, or major fraction thereof, as determined by the latest crop production annual summary report issued by the Crop Reporting Board, U.S. Department of Agriculture. The casting of the votes for each State shall be determined by the members of the Board from that State.

(b) A majority of the Board members shall constitute a quorum and any action of the Board shall require a majority of concurring votes of those present and voting. At assembled meetings all votes shall be cast in person or by duly authorized proxy.

(c) For routine and noncontroversial matters which do not require deliberation and the exchange of views, and for matters of an emergency nature when there is not enough time to call an assembled meeting, the Board may act upon a majority of concurring votes of its members cast by mail, telegraph, or telephone. Any vote cast by telephone shall be confirmed promptly in writing.

§ 1207.326 Compensation and reimbursement.

Members of the Board shall serve without compensation but shall be reimbursed for reasonable expenses incurred by them in the performance of their duties as members of the Board.

§ 1207.327 Powers.

The Board shall have the following powers subject to § 1207.361:

(a) To administer the provisions of this plan in accordance with its terms and conditions;

(b) To make rules and regulations to effectuate the terms and conditions of this plan;

(c) To receive, investigate, and report to the Secretary complaints of violations of this plan; and

(d) To recommend to the Secretary amendments to this plan.

§ 1207.328 Duties.

The Board shall, among other things, have the following duties:

(a) To meet and organize and to select from among its members a president and such other officers as may be necessary; to select committees and subcommittees of Board members to nominate the public member; to adopt such rules for the conduct of its business as it may deem advisable; and it may establish advisory committees of persons other than Board members;

(b) To employ such persons as it may deem necessary and to determine he compensation and define the duties of each; and to protect the handling of Board funds through fidelity bonds;

(c) At the beginning of each fiscal period, to prepare and submit to the Secretary for his approval a budget on fiscal period basis of the anticipated xpenses in the administration of this lan including the probable costs of all rograms or projects and to recommend a rate of assessment with respect thereto;

(d) To develop programs and projcts and to enter into contracts or greements for the development and arrying out of programs or projects f research, development, advertising r promotion, and the payment of the osts thereof with funds collected puruant to this plan;

(e) To keep minutes, books, and recrds which clearly reflect all of the cts and transactions of the Board. Minutes of each Board meeting shall e promptly reported to the Secretary;

(f) To cause the books of the Board o be audited by a certified public acountant at least once each fiscal period, and at such other time as the Board may deem necessary. The report of such audit shall show the receipt and expenditure of funds collected pursuant to this part. Two copies of each such report shall be furnished to the Secretary and a copy of each such report shall be made available at the principal office of the Board for inspection by producers and handlers:

(g) To give the Secretary the same notice of meetings of the Board and its subcommittees as is given to its members;

(h) To act as intermediary between the Secretary and any producer or handler; and

(i) To furnish the Secretary such information as he may request.

[37 FR 5008, Mar. 9, 1972, as amended at 49 FR 20806, May 17, 1984]

RESEARCH AND PROMOTION

§ 1207.335 Research and promotion.

The Board shall develop and submit to the Secretary for approval any programs or projects authorized in this section. Such programs or projects shall provide for:

(a) The establishment, issuance, effectuation and administration of appropriate programs or projects for the advertising and promotion of potatoes and potato products: *Provided, however,* That any such program or project shall be directed toward increasing the general demand for potatoes and potato products;

(b) Establishing and carrying on research and development projects and studies to the end that the marketing and utilization of potatoes may be encouraged, expanded, improved, or made more efficient: *Provided,* That quality control, grade standards and supply management programs shall not be conducted under, or as a part of, this plan; and

(c) The development and expansion of potato and potato product sales in foreign markets.

(d) No advertising or promotion program shall make any reference to private brand names or use false or unwarranted claims in behalf of potatoes or their products or false or unwarranted statements with respect to the attributes or use of any competing products.

EXPENSES AND ASSESSMENTS

§ 1207.341 Budget and expenses.

(a) At the beginning of each fiscal period, or as may be necessary thereafter, the Board shall prepare and recommend a budget on a fiscal period basis of its anticipated expenses and disbursements in the administration of this plan, including probable costs of research, development, advertising, and promotion. The Board shall also recommend a rate of assessment calculated to provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in § 1207.344.

(b) The Board is authorized to incur such expenses for research, development, advertising, or promotion of potatoes and potato products, such other expenses for the administration, maintenance, and functioning of the Board, and any referendum and administrative costs incurred by the Department of Agriculture as are approved pursuant to § 1207.361.

[37 FR 5008, Mar. 9, 1972, as amended at 49 FR 20806, May 17, 1984]

§ 1207.342 Assessments.

(a) The funds to cover the Board's expenses shall be acquired by the levying of assessments upon handlers as designated in regulations issued by the Board. Such assessments shall be levied at a rate fixed by the Secretary which shall not exceed one-half of one per centum of the immediate past ten calendar years United States average price received for potatoes by growers as reported by the Department of Agriculture and not more than one such assessment maybe collected on any potatoes.

(b) Each designated handler, as specified in regulations, shall pay assessments to the Board on all potatoes handled by him, including potatoes he produced. Assessments shall be paid to the Board at such time and in such manner as the Board shall direct pursuant to regulations issued hereunder. The designated handler may collect the assessments from the producer, or deduct such assessments from the proceeds paid to the producer on whose potatoes the assessments are made, provided he furnishes the producer with evidence of such payment.

(c) The Board may authorize other organizations to collect assessments in its behalf.

(d) The Board may exempt potatoes used for nonfood purposes, other than seed, from the provisions of this plan and shall establish adequate safeguards against improper use of such exemptions.

[37 FR 5008, Mar. 9, 1972, as amended at 49 FR 20806, May 17, 1984]

§ 1207.343 Producer refunds.

Any producer who has paid an assessment under this plan and who is not in favor of supporting the research and promotion program as provided for in this plan shall have the right to demand and receive from the Board a refund of such assessment upon submission of proof satisfactory to the Board that he paid the assessment for which refund is sought. Any such demand shall be made personally by such producer on a form which he shall sign and within a time period prescribed by the Board pursuant to regulations. Such time period shall give the producer at least 90 days from the date of collection to submit the refund request form to the Board. Any such refund shall be made within 60 days after demand therefor. No handler shall be eligible for a refund except on potatoes produced by him.

§ 1207.344 Operating reserve.

The Board may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in a reserve so established: *Provided*, That funds in the reserve shall not exceed approximately two fiscal periods' expenses. Such reserve funds may be used to defray any expenses authorized under this part.

REPORTS, BOOKS, AND RECORDS

§ 1207.350 Reports.

Each designated handler shall maintain a record with respect to each producer for whom he handled potatoes and for potatoes handled which he himself produced. He shall report to the Board at such times and in such manner as it may prescribe by regulations such information as may be necessary for the Board to perform its duties under this part. Such reports may include, but shall not be limited to, the following:

(a) Total quantity of potatoes handled for each producer and for himself, including those which are exempt under the plan;

(b) Total quantity of potatoes handled for each producer and for himself subject to the plan and assessments, and

(c) Name and address of each person from whom he collected an assessment, the amount collected from each person, and the date such collection was made.

§ 1207.351 Books and records.

Each handler subject to this part shall maintain and make available for inspection by authorized employees of the Board and the Secretary, but not to persons not subject to the provisions of section 310(c) of the act, such books and records as are appropriate and necessary to carry out the provisions of this plan and the regulations issued thereunder, including such records as are necessary to verify any reports required. Such records shall be maintained for at least 2 years beyond the marketing year of their applicability.

§ 1207.352 Confidential treatment.

All information obtained from such books, records, or reports shall be kept confidential by all employees of the Department of Agriculture and of the Board, and by all contractors and agents retained by the Board, and only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary, or to which he or any officer of the United States is a party, and involving this plan. Nothing in this section shall be deemed to prohibit (a) the issuance of general statements based upon the reports of a number of handlers subject to this plan, which statements do not identify the information furnished by any person, or (b) the publication by direction of the Secretary, of the name of any person violating this plan, together with a statement of the particular provisions of this plan violated by such person.

MISCELLANEOUS

§ 1207.360 Influencing governmental action.

No funds collected by the Board under this plan shall in any matter be used for the purpose of influencing governmental policy or action except in recommending to the Secretary amendments to this subpart.

§ 1207.361 Right of the Secretary.

All fiscal matters, programs or projects, rules or regulations, reports, or other substantive action proposed and prepared by the Board shall be submitted to the Secretary for his approval.

§ 1207.362 Suspension or termination.

(a) The Secretary shall, whenever he finds that this plan or any provision thereof obstructs or does not tend to effectuate the declared policy of the act, terminate or suspend the operation of this plan or such provision thereof.

(b) The Secretary may conduct a referendum at any time, and shall hold a referendum on request of the Board or of 10 percent or more of the potato producers to determine whether potato producers favor the termination or suspension of this plan. He shall suspend or terminate such plan at the end of the marketing year whenever he determines that its suspension or termination is favored by a majority of the potato producers voting in such referendum who, during a representative period determined by the Secretary, have been engaged in the production of potatoes and who produced more than 50 percent of the volume of the potatoes produced by the producers voting in the referendum.

§ 1207.363 Proceedings after termination.

(a) Upon the termination of this plan, the Board shall recommend not more than five of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all funds and property then in the possession or under control of the Board including claims for any funds unpaid or property not delivered or any other claim existing at the time of such termination.

(b) The said trustees shall (1) continue in such capacity until discharged by the Secretary; (2) carry out the obligations of the Board under any contracts or agreements entered into by it pursuant to this plan; (3) account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to such person or persons as the Secretary may direct; and (4) upon the request of the Secretary execute such assignments or other instruments necessary or appropriate to vest in such person or persons full title and right to all of the funds, property, and claims vested in the Board of the trustees pursuant to this section.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this section shall be subject to the same obligation imposed upon the Board and upon the trustee.

(d) A reasonable effort shall be made by the Board or its trustees to return to producers any residual funds not required to defray the necessary expenses of liquidation. If it is found impractical to return such remaining funds to producers, such funds shall be disposed of in such manner as the Secretary may determine to be appropriate.

§ 1207.364 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this plan or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this plan or any regulation issued thereunder, or (b) release or extinguish any violation of this plan or any regulation issued thereunder, or (c) affect or impair any rights or remedies of the United States, or of the Secretary, or of any other person, with respect to any such violation.

§ 1207.365 Personal liability.

No member of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgments, mistakes, or other acts, either of commission or omission, as such member except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

§ 1207.366 Separability.

If any provision of this plan is declared invalid or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of this plan or applicability thereof to other persons or circumstances shall not be affected thereby.

EXPENSES AND RATE OF ASSESSMENT

§ 1207.412 Expenses and rate of assessment.

(a) The reasonable expenses that are likely to be incurred during the fiscal period beginning July 1, 1983, and ending June 30, 1984, by the National Potato Promotion Board for its maintenance and functioning and for such purposes as the Secretary determines to be appropriate will amount to $2,565,000.

(b) The rate of assessment to be paid by each designated handler in accordance with the provisions of the Plan shall be one cent ($0.01) per hundredweight of assessable potatoes handled by such person during said fiscal period.

(c) Unexpended income in excess of expenses for the fiscal period may be carried over as an operating monetary reserve.

(d) Terms used in this section have the same meaning as when used in the Potato Research and Promotion Plan.

(Approved by the Office of Management and Budget under Control No. 0581-0093)

[48 FR 38604, Aug. 25, 1983]

Subpart—Rules and Regulations

SOURCE: 37 FR 17379, Aug. 26, 1972, unless otherwise noted.

DEFINITIONS

§ 1207.500 Definitions.

(a) *Plan.* "Plan" means the Potato Research and Promotion Plan issued by the Secretary of Agriculture pursuant to the act.

(b) *Board.* "Board" means the National Potato Promotion Board, established pursuant to § 1207.320 of the plan.

(c) *Potatoes.* "Potatoes" means all varieties of Irish potatoes grown by producers in the 48 contiguous States of the United States.

(d) *Producer.* "Producer" means any person engaged in the growing of 5 or more acres of potatoes who owns or shares the ownership and risk of loss of such potato crop.

(e) *Handle.* "Handle" means to grade, pack, process, sell, transport, purchase, or in any other way to place potatoes or cause potatoes to be placed in the current of commerce. Such term shall not include the transportation or delivery of field-run potatoes by the producer thereof to a handler for grading, storage, or processing.

(f) *Handler.* "Handler" means any person (except a common or contract carrier of potatoes owned by another person) who handles potatoes, including a producer who handles potatoes of his own production.

(g) *Person.* "Person" means any individual, partnership, corporation, association or other entity.

(h) *Secretary.* "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

(i) *Processor.* "Processor" means any person who commercially processes potatoes into potato products, including, but not restricted to, frozen, dehydrated, or canned potato products, potato chips and shoestrings, and flour.

GENERAL

§ 1207.501 Communications.

All communications in connection with the Potato Research and Promotion Plan shall be addressed to: National Potato Promotion Board, 1385 South Colorado Boulevard, Suite 512, Denver, CO 80222.

[38 FR 26354, Sept. 20, 1973]

§ 1207.503 Nominations.

(a) Pursuant to § 1207.322 of the plan, the Board shall hold or cause to be held a meeting or meetings of producers in the producing sections or States each year to nominate members for the Board. One individual shall be nominated for each position to become vacant. A list of nominees shall be submitted to the Secretary for his consideration by January 1 of each year.

(b) Such meetings shall be well publicized with notice given to producers and the Secretary at least 10 days prior to the meeting.

[37 FR 17379, Aug. 26, 1972, as amended at 49 FR 2093, Jan. 18, 1984]

§ 1207.504 Term of office.

(a) The term of office of Board members shall be for three years and shall begin March 1 and end on the last day of February.

(b) Board members shall serve during the term of office for which they are selected and have qualified and until their successors are selected and have qualified.

[38 FR 7123, Mar. 16, 1973, as amended at 49 FR 2093, Jan. 18, 1984]

§ 1207.505 Procedure.

The procedure for conducting the Board's meetings shall be in accordance with the bylaws adopted by the Board on June 7, 1972, which are hereby approved.

§ 1207.506 Policy.

(a) It shall be the policy of the Board to carry out an effective and continuous coordinated program of marketing research, development, advertising, and promotion in order to help maintain and expand existing domestic and foreign markets for potatoes and to develop new or improved markets.

(b) It shall be the objective of the Board to carry out programs and projects which will provide maximum benefit to the potato industry and no undue preference shall be given to any of the various industry segments.

§ 1207.507 Administrative Committee.

(a) The Board shall annually select from among its members an Administrative Committee consisting of not more than 25 members. Selection shall be made in such manner as the Board may prescribe: Except that such committee shall include the President, and six Vice Presidents, one of whom shall also serve as the Secretary and Treasurer of the Board.

(b) The Administrative Committee shall act for the Board in implementing such marketing research, development, advertising, and/or promotion activities as directed by the Board, and shall, subject to such direction, be charged with developing and submitting to the Secretary for his approval specific programs or projects in the name of the Board. The Administrative Committee shall further act for the Board in authorizing contracts or agreements for the development and carrying out of such programs or projects and the payment of the costs thereof with funds collected pursuant to § 1207.342 of the plan.

(1) The Administrative Committee also shall act for the Board in contracting with cooperating agencies for the collection of assessments pursuant to § 1207.513(d).

(c) The Board may assign such other administrative powers and duties to the Administrative Committee as it shall determine, and the Administrative Committee shall act on behalf of and in the name of the Board in all administrative matters.

[37 FR 17379, Aug. 26, 1972, as amended by Amdt. 6, 42 FR 55879, Oct. 20, 1977; 44 FR 25621, May 2, 1979; 50 FR 25199, June 18, 1985]

§ 1207.508 USDA costs.

Pursuant to § 1207.341 of the Plan the Board shall pay those administrative costs incurred by the U.S. Department of Agriculture for the conduct of its duties under the Plan as are determined periodically by the Secretary. Payment shall be due promptly after billing for such costs.

[49 FR 26202, June 27, 1984]

ASSESSMENTS

§ 1207.510 Levy of assessment.

During the effective period of this subpart, an assessment of two cents per hundredweight shall be levied on all potatoes for ultimate consumption as human food and seed. Potatoes used for other nonhuman food purposes, including starch, are exempted from assessment but subject to the safeguard provisions of § 1207.515 of this subpart. No more than one such assessment shall be made on any potatoes. No assessments shall be levied on potatoes grown by producers of less than five acres of potatoes.

[49 FR 26202, June 27, 1984]

§ 1207.511 Determination of assessable quantity.

The assessable quantity of potatoes in any lot shall be determined on the basis of utilization. Assessments shall be due on the entire lot handled for human consumption, seed, or unspecified purposes if there is no accounting made on the basis of the utilization of such lot. However, if the accounting identifies all or portions of such lot on the basis of utilization, assessments shall be due only on that portion utilized for human consumption and seed.

§ 1207.512 Designated handler.

The assessment on each lot of potatoes handled shall be paid by the designated handler as hereinafter set forth:

(a) Unless otherwise provided in paragraphs (a)(8), (b), and (c) of this section, the designated handler shall be the first handler of such potatoes. The first handler is the person who initially performs a handler function as heretofore defined. Such person may be a fresh shipper, processor, or other person who first places the potatoes in the channels of commerce. A producer who grades, packs, or otherwise performs handler functions thereby becomes a handler and as such assumes first handler responsibilities under this part. The following examples are provided to aid in identification of first handlers who are designated handlers:

(1) Producer delivers field-run potatoes of his own production to a handler for preparation for market. The handler in this instance is the designated handler, regardless of whether he subsequently handles such potatoes for his own account or for the account of the producer.

(2) Producer delivers field-run potatoes of his own production to a handler who takes title to such potatoes and places them in sto age for subsequent handling. The handler who purchases such potatoes from the producer is the designated handler.

(3) Producer delivers field-run potatoes to a commercial storage facility for the purpose of holding such potatoes under his own account for later sale. There is no designated handler in this instance since such potatoes have not been handled as heretofore defined and nc assessment is due. The designated handler of such potatoes would be identified on the basis of subsequent handling of such potatoes.

(4) Fresh shipper purchases a lot of potatoes from a producer, packs a portion of such potatoes for fresh market, and delivers the balance to a processor. The fresh shipper is the designated handler for all potatoes in the lot.

(5) Handler purchases potatoes from a producer's field or storage for the purpose of preparing such potatoes for market or for transporting such potatoes to storage for subsequent handling. The handler who purchases such potatoes from the producer is the designated handler.

(6) Producer packs and sells potatoes of his own production from the field, roadside stand, or storage to a consumer, itinerant trucker, or other buyer. In performing such handler functions the producer assumes the responsibility of designated handler.

(7) Processor utilizes potatoes of his own production in the manufacture of potato chips, frozen, dehydrated, or canned products for human consumption. In so handling potatoes, the processor assumes the responsibility of designated handler.

(8) Producer utilizes potatoes of his own production for seed in planting his subsequent crop. Such seed potatoes do not enter the current of commerce; there is no designated handler in this instance since the potatoes have not been handled as heretofore defined and no assessment is due. However, seed potatoes sold or shipped to other producers for planting or to other persons for subsequent disposition enter the current of commerce and are subject to assessment. The producer of seed potatoes shall be the designated handler of such potatoes shipped to other producers for planting and the assessment is due when he first sells or otherwise handles such potatoes. The first person who acquires seed potatoes from the producer thereof for subsequent disposition other than planting by said person shall be the designated handler of such potatoes. However, the seed producer will be the designated handler responsible for filing reports and making payments, unless he can show that the first person who obtained the potatoes from him disposed of them other than by planting. To show this the seed producer must submit to the Potato Board the name and address of the first person who obtained the potatoes from him and an invoice of sale or settlement sheet on which it is indicated that such person will be the designated handler and therefore will be responsible for the payment of the assessments. Only by showing this is the seed producer no longer considered the designated handler and therefore not liable for the assessments.

(b) Any person who handles potatoes for a producer thereof under oral or written contract or agreement providing for the sale thereof shall be the designated handler for such potatoes, notwithstanding the fact that the producer may have graded, packed, or otherwise handled such potatoes and thereby became the first handler of such potatoes.

Examples. A cooperative marketing association, or other person, who makes an accounting to the producer, or pay the proceeds of the sale to the producer would be the designated handler responsible for the assessment.

(c) Any processor who purchases potatoes from the producer thereof shall be the designated handler even though the producer may have graded, packed, or otherwise handled such potatoes and thereby became the first handler of such potatoes.

[37 FR 17379, Aug. 26, 1972, as amended by Amdt. 4, 40 FR 7893, Feb. 24, 1975; Amdt. 7, 43 FR 9133, Mar. 6, 1978; Amdt. 8, 43 FR 51001, Nov. 2, 1978]

§ 1207.513 Payment of assessments.

(a) *Time of payment.* The assessment shall become due at the time a determination of assessable potatoes is made in the normal handling process, pursuant to § 1207.511. If no determination is made of the utilization of a lot, assessments shall be due on the entire lot when it enters the current of commerce.

(b) *Responsibility for payment.* The designated handler is responsible for payment of assessment. He may pay with no reimbursement from the producer. In the alternative, he may collect the assessment from the producer, or deduct such assessment from the proceeds paid to the producer on whose potatoes the assessment is made, provided he furnishes the producer with evidence of such payment. Any such collection or deduction of assessment shall be made not later than the time when the assessment becomes payable by the handler to the Board. Failure of the handler to collect or deduct such assessment does not relieve the handler of his obligation to remit the assessment to the Board.

(c) *Payment direct to the Board.* (1) Except as provided in paragraph (d) of this section, each designated handler shall remit assessments directly to the Board by check, draft, or money order payable to the National Potato Promotion Board, or NPPB not later than 10 days after the end of the month such assessment is due together with a report (preferably on Board forms) thereon.

(2) All designated handler reports shall contain the following information:

(i) Date of report (which is also date of payment to the Board);

(ii) Period covered by report;

(iii) Total quantity of potatoes determined as assessable during the reporting period, pursuant to § 1207.511.

(3) Designated handlers who collect assessments from producers or withhold assessments from their accounts or pay the assessment themselves shall also include a list of all such producers whose potatoes were handled during the period, their addresses and the total assessable quantities handled for each such producer.

(i) In lieu of such a list, the designated handler may substitute authentic copies of settlement sheets given to each producer provided such settlement sheets contain all the information listed above.

(ii) The words "final report" shall be shown on the last report at the close of his marketing season or at the end of each fiscal period if such handler markets potatoes on a year-round basis.

(4) Prepayment of assessment: (i) In lieu of the monthly assessment and reporting requirements of paragraph (b) of this section, the Board may permit designated handlers to make advance payments of their total estimated assessments for the season to the Board prior to their actual determination of assessable potatoes. Such procedure may be permitted when it is considered by the designated handler to be the more practical method of payment.

(ii) Persons using such procedure shall provide a final annual accounting of actual handling and assessments.

(iii) Specific requirements, instructions, and forms for making such advance payments shall be provided by the Board upon request.

(d) *Payment through cooperating agency.* The Board may authorize other organizations to collect assessments in its behalf. In any State or area in which the Board has negotiated an agreement to collect assessments with an agency such as a State Potato Commission or a Potato Association approved by the Secretary, the designated handler shall pay the assessment to such agency in the time and manner, and with such identifying information as specified in such agreement. Such an agreement shall not provide any cooperating agency with authority to collect confidential information from handlers; to qualify, the cooperating agency must on its own accord have access to all information required by the Board for collection purposes. If the Board requires further evidence of payment than provided, it may acquire such evidence from individual designated handlers.

(1) All such agreements are subject to the requirement of § 1207.352 *Confidential treatment*, of the plan, the provisions of section 310(c) of the Act, and all applicable rules and regulations and financial safeguards in effect under the Act and the plan; and all affected persons shall agree to, and conduct their operations and activities in accordance with, such requirements.

[37 FR 17379, Aug. 26, 1972, as amended by Amdt. 6, 42 FR 55879, Oct. 20, 1977]

§ 1207.514 Refunds.

A refund of assessments may be obtained by a producer only by following the procedure prescribed in this section.

(a) *Application form.* A producer shall obtain a refund form from the Board by written request which shall bear the producer's signature. For partnerships, corporations, associations, or other business entities, a partner or an officer of the entity must sign the request and indicate his title.

(b) *Submission of refund application to Board.* Any producer requesting a refund shall mail an application on the prescribed form to the Board within 90 days from the date the assessment become payable pursuant to § 1207.513. The refund application shall show (1) producer's name and address, (2) handler's or handlers' name(s) and address(es); (3) the number of hundredweight on which refund is requested; (4) date or inclusive dates on which assessments were paid; and (5) the producer's signature. Where more than one producer shared in the assessment payment, joint or separate refund application forms may be filed. In any such case the refund application shall show the names, addresses and proportionate shares of such producers and the signature of each.

(c) *Proof of payment of assessment.* The receipt given to the producer by the handler, a copy thereof, or such other evidence satisfactory to the Board, shall accompany the producer's refund application. Within 60 days from the date the properly executed application for refund is received by the Board, the Board shall make remittance to the producer. For joint applications, the remittance shall be made payable jointly to all eligible producers signing the refund application form.

[37 FR 17379, Aug. 26, 1972, as amended at 39 FR 16117, May 7, 1974; 42 FR 55879, Oct. 20, 1977]

§ 1207.515 Safeguards.

The Board may require reports by designated handlers on the handling and disposition of exempted potatoes. Also, authorized employees of the Board or the Secretary, may inspect such books and records as are appropriate and necessary to verify the reports on such disposition.

RECORDS

§ 1207.532 Retention period for records.

Each handler required to make reports pursuant to this subpart shall maintain and retain for at least 2 years beyond the marketing year of their applicability:

(a) One copy of each report made to the Board; and

(b) Such records as are necessary to verify such reports.

§ 1207.533 Availability of records.

Each handler required to make reports pursuant to this subpart shall make available for inspection by authorized employees of the Board or the Secretary during regular business hours, such records as are appropriate and necessary to verify reports required under this subpart.

§ 1207.534 OMB control number assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in this part have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control number 0581-0093.

[49 FR 23826, June 8, 1984]

CONFIDENTIAL INFORMATION

§ 1207.540 Confidential books, records, and reports.

All information obtained from the books, records, and reports of handlers and all information with respect to refunds of assessments made to individual producers shall be kept confidential in the manner and to the extent provided for in § 1207.352 of the plan.

§ 1207.545 Right of the Secretary.

All fiscal matters, programs or projects, rules or regulations, reports, or other substantive action proposed and prepared by the Board shall be submitted to the Secretary for his approval.

§ 1207.546 Personal liability.

No member of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

§ 1207.550 Determination of membership.

Pursuant to § 1207.320 and the recommendation of the National Potato Promotion Board, annual membership on the Board shall be determined on the basis of the average potato production of the three preceding years in each of the 48 contiguous States as set forth in the Crop Production Annual Summary Reports issued by the Crop Reporting Board of the U.S. Department of Agriculture.

[38 FR 26354, Sept. 20, 1973]

PART 1210—WATERMELON RESEARCH AND PROMOTION PLAN

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AUTHORITY: 7 U.S.C. 4901-4916.

SOURCE: 53 FR 51091, Dec. 20, 1988, unless otherwise noted.

Subpart—Procedure for the Conduct of Referenda in Connection with the Watermelon Research and Promotion Plan

§ 1210.200 General.

Referenda to determine whether producers and handlers favor issuance, suspension or termination of a Watermelon Research and Promotion Plan shall be conducted in accordance with this subpart.

§ 1210.201 Definitions.

(a) "Act" means the Watermelon Research and Promotion Act, Title XVI, Subtitle C of Pub. L. 99-198, 99th Congress, effective January 1, 1986 (7 U.S.C. 4901-4916).

(b) "Secretary" means the Secretary of Agriculture, or any officer or employee of the Department of Agriculture to whom authority has been delegated or may be delegated, to act in the Secretary's stead.

(c) "Administrator" means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may be delegated to act in the Administrator's stead.

(d) "Plan" means any plan or any amendment of a plan which may be issued pursuant to the Act;

(e) "Referendum agent" means the individual or individuals designated by the Secretary to conduct the referendum.

(f) "Representative period" means the period designated by the Secretary pursuant to section 1653 of the Act.

(g) "Person" means any individual, group of individuals, partnership, corporation, association, cooperative or other entity. For the purposes of this definition, the term "partnership" includes (1) a husband and wife who have title to, or leasehold interest in, land as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property, and (2) so-called "joint ventures," wherein one or more parties to the agreement, informal or otherwise, contributed capital and others contribute labor, management, equipment, or other services, or any variation of such contributions by two or more parties, so that it results in the growing and handling of watermelons for market and the authority to transfer title to the watermelons so produced.

(h) "Producer" means any person, defined as a producer in the plan, who is engaged in the growing of five or more acres of watermelons during a representative period and either:

(1) Owns and farms land, resulting in ownership, by said producer, of the watermelons produced thereon;

(2) Rents and farms land, resulting in ownership, by said producer, of all or a portion of the watermelons produced thereon; or

(3) Owns land which said producer does not farm and, as rental for such land, obtains the ownership of a portion of the watermelons produced thereon.

Ownership of, or leasehold interest in, land and the acquisition, in any manner other than set forth in this subpart, of legal title to the watermelons grown on said land, shall not be deemed to result in such owners or lessees becoming producers. Persons who produce watermelons for non-food uses are not "producers" for the purposes of this subpart.

(i) "Handler" means any person, defined as a handler in the plan, who is engaged in the handling of watermelons during the representative period as the first person peforming a handling function, and either: (1) takes title or possession of watermelons from a producer and directs the grading, packing, transporting and selling of the watermelons in the current of commerce; (2) purchases watermelons wholesale from producers and sells to the retail trade at auction markets or farmers' markets: *Provided*, That harvest crews and common carriers who collect and transport watermelons from the field to a handler, and brokers or commission agents who arrange the sale of but do not take title or possession of watermelon, are not first handlers.

§ 1210.202 Voting.

(a) Each person who is a producer or handler as defined in this subpart, at the time of the referendum and who also was a producer or handler during the representative period, shall be entitled to only one vote in the referendum: *Provided*, That each producer is a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce watermelons in which more than one of the parties is a producer, shall be entitled to one vote in the referendum covering only that producer's share of the ownership; and *Provided further*, That the vote of a person who both produces and handles watermelons will be counted as a producer vote if that person handles 50 percent or less of that person's own production during the representative period, and that the vote of a person who both produces and handles watermelons will be counted as a handler vote if that person handles more than 50 percent of that person's own production during the representative period.

(b) Proxy voting is not authorized, but an officer or employee of a corporate producer or handler, or an administrator, executor or trustee of a producing or handling entity may cast a ballot on behalf of such entity. Any individual so voting in a referendum shall certify that that individual is an officer or employee of the producer or handler, or an administrator, executor, or trustee of a producing or handling entity and that that individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) Each producer or handler shall be entitled to cast only one ballot in the referendum.

§ 1210.203 Instructions.

The referendum agents shall cause a referendum to be conducted, in the manner herein provided, under supervision of the Administrator. The Administrator may prescribe additional instructions and designate subagents, not inconsistent with the provisions hereof, to govern the procedure to be followed by referendum agents. Such agents shall:

(a) Determine the time of commencement and termination of the period of the referendum.

(b) Determine procedures for casting ballots at county offices of the Extension Service.

(c) Give reasonable advance notice of referendum dates.

(d) Provide ballots and related material to be used in the referendum. Ballot material shall provide for recording essential information including that needed for ascertaining:

(1) Whether the persons voting, or on whose behalf the vote is cast, is an eligible voter;

(2) The acreage and volume in pounds of watermelons produced by the voting producer during the representative period, and

(3) The volume in pounds of watermelons handled by the voting handler during the representative period.

(e) At the conclusion of the referendum, canvass the ballots, tabulate the results, and, except as otherwise directed, report the outcome to the Administrator and submit the following:

(1) All ballots received by agents and subagents, together with a certificate to the effect that the ballots forwarded are all of the ballots cast and received by the referendum agents during the referendum period;

(2) A list of all ballots deemed to be invalid; and

(3) A tabulation of the results of the referendum and report thereon, including a statement explaining the method used in giving publicity to the referendum and showing other information pertinent to the manner in which the referendum was conducted.

[53 FR 51091, Dec. 20, 1988, as amended at 55 FR 2048, Jan. 22, 1990]

§ 1210.204 Subagents.

The referendum agents may appoint, as subagent, any person or persons deemed necessary or desirable to assist the agents in performing the agents' functions. Each person so appointed may be authorized by said agents to perform, in accordance with the requirements herein set forth, any or all of the following functions.

(a) Give reasonable advance notice of the referendum by:

(1) Utilizing, without advertising expense, available media or public information sources (including, but not limited to, press and radio facilities serving the production area) to announce the dates of the referendum, the address of the county office of Extension Service used as the polling place, and the times such office will be open for voting, as well as the methods of voting, the eligibility requirements for voting, and other pertinent information regarding the referendum.

(2) Such other means as said subagents may deem advisable.

(b) Preside as poll officer at the county Extension Service office when ballots are cast.

(c) Make available to producers and handlers the instructions on voting, the appropriate ballot and certification forms, and, except in the case of a referendum on suspension or termination of a plan, a summary of the terms and conditions of the plan: *Provided,* That no person who claims to be eligible to vote shall be refused a ballot.

(d) Collect the completed ballots and provide for appropriate custody of such ballots.

(e) Provide for the delivery of completed ballots to the referendum agents.

§ 1210.205 Ballots.

The referendum agents and subagents shall accept all ballots cast; but should any one of them deem that a ballot should be challenged for any reason, said agent shall write on said ballot a statement to the effect that such ballot was challenged, by whom challenged, the reasons for the challenge, the results of any investigations made with respect to the challenge, and the disposition of the challenge. Invalid ballots shall not be counted.

§ 1210.206 Referendum report.

Except as otherwise directed, the Administrator shall prepare and submit to the Secretary a report on results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to the analysis of the referendum and its results.

§ 1201.207 Confidential information.

All ballots cast, the information contained on each ballot (whether or not relating to the identity of any person who voted or the manner in which any person voted), and all other information furnished to, compiled by, or in possession of, referendum agents and subagents shall be treated as confidential.

Subpart—Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From the Watermelon Research and Promotion Plan

§ 1210.250 Words in the singular form.

Words in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 1210.251 Definitions.

As used in this subpart, the terms as defined in the Act shall apply with equal force and effect. In addition, unless the context otherwise requires:

(a) "Act" means the Watermelon Research and Promotion Act, Title XVI, Subtitle C of Pub. L. 99-198, 99th Congress, effective January 1, 1986 [7 U.S.C. 4019-4916];

(b) "Secretary" means the Secretary of Agriculture or any officer or employee of the Department of Agriculture to whom authority has been delegated or may be delegated, to act in the Secretary's stead;

(c) "Administrative law judge" or "judge" means any administrative law judge, appointed pursuant to 5 U.S.C. 3105, and assigned to the proceeding involved;

(d) "Administrator" means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department of Agriculture to whom authority has been delegated or may be delegated, to act in the Administrator's stead;

(e) "Plan" means any plan or any amendment of a plan which may be issued pursuant to the Act;

(f) "Person" means any individual, partnership, corporation, association, or other entity subject to a plan or to whom an order is sought to be made applicable, or on whom an obligation has been imposed or is sought to be imposed under a plan.

(g) "Proceeding" means a proceeding before the Secretary arising under section 1650(a) of the Act;

(h) "Hearing" means that part of the proceedings which involves the submission of evidence;

(i) "Party" includes the Department of Agriculture;

(j) "Hearing clerk" means the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C.;

(k) "Decision" means the judge's report to the Secretary and includes the judge's proposed (1) findings of fact and conclusions with respect to all material issues of fact, law or discretion, as well as the reasons or basis thereof, (2) order, and (3) rulings on findings, conclusions and plans submitted by the parties; and

(l) "Petition" includes an amended petition.

§ 1210.252 Institution of proceeding.

(a) Filing and service petitions. Any person subject to a plan desiring to complain that any plan or any provision of any such plan or any obligation imposed in connection with the plan is not in accordance with law, shall file with the hearing clerk, in quintuplicate, a petition in writing addressed to the Secretary. Promptly upon receipt of the petition in writing the hearing clerk shall transmit a true copy thereof to the Administrator and the General Counsel, respectively.

(b) Contents of petitions. A petition shall contain:

(1) The correct name, address and principal place of business of the petitioner. If the petitioner is a corporation, such fact shall be stated, together with the name of the State of incorporation, the date of incorporation, and the names, addresses, and respective positions held by its officers and directors; if an unincorporated association, the names and addresses of its officers, and the respective positions

held by them; if a partnership, the name and address of each partner;

(2) Reference to the specific terms or provisions of the plan, or the interpretation or application of such terms or provisions, which are complained of;

(3) A full statement of the facts (avoiding a mere repetition of detailed evidence) upon which the petition is based, and which it is desired that the Secretary consider, setting forth clearly and concisely the nature of the petitioner's business and the manner in which petitioner claims to be affected by the terms or provisions of the order or the interpretation or application thereof, which are complained of;

(4) A statement on the grounds on which the terms or provisions of the plan, or the interpretation or application thereof, which are complained of, are challenged as not in accordance with law; and

(5) Requests for the specific relief which the petitioner desires the Secretary to grant.

(6) An affidavit by the petitioner, or, if the petitioner is not an individual, by an officer of the petitioner having knowledge of the facts stated in the petition, verifying the petition and stating that it is filed in good faith and not for purposes of delay.

(c) A motion to dismiss a petition—Filing, contents, and responses to a petition. If the Administrator is of the opinion that the petition, any portion thereof, does not substantially comply, in form or content, with the Act or with requirements of paragraph (b) of this section, the Administrator may, within 30 days after the filing of the petition, file with the hearing clerk a motion to dismiss the petition, or any portion of the petition, on one or more of the grounds stated in this paragraph. Such motion shall specify the grounds for objection to the petition and if based, in whole or in part, on allegations of fact not appearing on the face of the petition, shall be accompanied by appropriate affidavits or documentary evidence substantiating such allegations of fact. The motion may be accompanied by a memorandum of law. Upon receipt of such motion, the hearing clerk shall cause a copy thereof to be served upon the petitioner, together with a notice stating that all papers to be submitted in opposition to such motion, including any memorandum of law, must be filed by the petitioner with the hearing clerk not later than 20 days after the service of such notice upon the petitioner. Upon the expiration of the time specified in such notice, or upon receipt of such papers from the petitioner, the hearing clerk shall transmit all papers which have been filed in connection with the motion to the judge for the judge's consideration.

(d) Further proceedings. Further proceedings on petitions to modify or to be exempted from the plan shall be governed by paragraph (c)(2) of § 900.52 through § 900.71 of the Rules of Practice Governing Proceedings on Petitions to Modify or to be Exempted From Marketing Orders and as may hereafter be amended, and the same are incorporated herein and made a part hereof by reference. However, each reference to "marketing order" in the title shall mean "plan."

Subpart—Watermelon Research and Promotion Plan

SOURCE: 54 FR 24545, June 8, 1989 (Interim), unless otherwise noted.

DEFINITIONS

§ 1210.301 Secretary.

"Secretary" means the Secretary of Agriculture of the United States or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 1210.302 Act.

"Act" means the Watermelon Research and Promotion Act of 1985 (Title XVI, Subtitle C of Pub. L. 99-198, 99th Congress, effective January 1, 1986, 99 Stat. 1622).

§ 1210.303 Plan.

"Plan" means this watermelon research and promotion Plan issued by the Secretary pursuant to the Act.

§ 1210.304 Board.

"Board" means the National Watermelon Promotion Board, hereinafter established pursuant to § 1210.320.

§ 1210.305 Watermelon.

"Watermelon" means all varieties of the Family Curcubitaceae; Genus and Species; Citrullus Lanatus, popularly referred to as watermelon grown by producers in the 48 contiguous States of the United States.

§ 1210.306 Producer.

"Producer" means any person engaged in the growing of five acres or more of watermelons including any person who owns or shares the ownership and risk of loss of such watermelon crop.

§ 1210.307 Handle.

"Handle" means to grade, pack, process, sell, transport, purchase, or in any other way to place or cause watermelons to which one has title or possession to be placed in the current of commerce. Such term shall not include the transportation or delivery of field run watermelons by the producer thereof to a handler for grading, sizing or processing.

§ 1210.308 Handler.

"Handler" means any person (except a common or contract carrier of watermelons owned by another person) who handles watermelons, including a producer who handles watermelons of the producer's own production. For the purposes of this subpart, the term "handler" means the "first" person who performs the handling functions.

§ 1210.309 Person.

"Person" means any individual, group of individuals, partnership, corporation, association, cooperative, or other entity.

§ 1210.310 Fiscal period and marketing year.

"Fiscal period" and "marketing year" mean the 12 month period from January 1 to December 31 or such other period which may be approved by the Secretary.

§ 1210.311 Programs and projects.

"Programs" and "projects" mean those research, development, advertising, or promotion programs or projects developed by the Board pursuant to § 1210.331.

§ 1210.312 Promotion.

"Promotion" means any action taken by the Board, pursuant to the Act, to present a favorable image for watermelons to the public with the express intent of improving the competitive position of watermelons in the marketplace and stimulating sales of watermelons, and shall include, but not be limited to, paid advertising.

§ 1210.313 Research.

"Research" means any type of systematic study or investigation, and/or the evaluation of any study or investigation designed to advance the image, desirability, usage, marketability, production, or quality of watermelons.

NATIONAL WATERMELON PROMOTION BOARD

§ 1210.320 Establishment and membership.

(a) There is hereby established a National Watermelon Promotion Board, hereinafter called the "Board". The Board shall be composed of producers and handlers and one public representative appointed by the Secretary. An equal number of producer and handler representatives shall be nominated by producers and handlers pursuant to § 1210.321. The public representative shall be nominated by the producer and handler Board members in such manner as may be prescribed by the Secretary. If producers and handlers fail to select nominees for appointment to the Board, the Secretary may appoint persons on the basis of representation as provided in § 1210.324. If the Board fails to adhere to procedures prescribed by the Secretary for nominating a public representative, the Secretary shall appoint such representative.

(b) Membership on the Board shall be determined on the basis of two handler and two producer representatives for each of seven districts in the contiguous States of the United States.

Such districts as hereby established have approximately equal production volume according to the three-year average production as set forth in the USDA Crop Production Annual Summary Reports for 1979, 1980, and 1981. They are:

District #1—South Florida including all areas south of State Highway 50.

District #2—North Florida including all areas north of State Highway 50.

District #3—The States of Alabama and Georgia.

District #4—The States of South Carolina, North Carolina, Virginia, Delaware, Maryland, West Virginia, Pennsylvania, New Jersey, New York, Ohio, Michigan, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, and Maine.

District #5—The States of Mississippi, Kentucky, Tennessee, Louisiana, Arkansas, Missouri, Illinois, Indiana, Iowa, Kansas, Nebraska, Oklahoma, Wisconsin, Minnesota, North Dakota, South Dakota, Colorado, and New Mexico.

District #6—The State of Texas.

District #7—The States of Arizona, California, Nevada, Utah, Oregon, Idaho, Wyoming, Washington, and Montana.

(c) After two years, the Board shall review the districts to determine whether realignment of the districts is necessary and at least every five years thereafter the Board shall make such a review. In making such review, it shall give consideration to:

(1) The most recent three years USDA production reports or Board assessment reports if USDA production reports are unavailable;

(2) Shifts and trends in quantities of watermelon produced, and

(3) Other relevant factors.

As a result of this review, the Board may realign the districts subject to the approval of the Secretary. Any such realignment shall be recommended by the Board to the Secretary at least six months prior to the date of the call for nominations and shall become effective at least 30 days prior to such date.

§ 1210.321 Nominations and selection.

The Secretary shall appoint the members of the Board from nominations to be made in the following manner:

(a) Except for initial Board members whose nomination process should be conducted by the Secretary, the Board shall issue a call for nominations by February first of each year in which an election is to be held. The call shall include at a minimum, the following information:

(1) A list of the vacancies and qualifications as to producers and handlers by district for which nominees may be submitted.

(2) The date by which the nominees shall be submitted to the Secretary for consideration to be in compliance with § 1210.323 of this subpart.

(3) A list of those States, by district, entitled to participate in the nomination process.

(4) The date, time, and location of any next scheduled meeting of the Board, national and State producer or handler associations, and district conventions if any.

(b) Nominations for positions that will become vacant shall be made by district convention in the district entitled to nominate. Notice of such convention shall be publicized to all producers and handlers within such district, and the Secretary at least ten days prior to said event. The notice shall have attached to it the call for nominations from the Board. The responsibility for convening and publicizing the district convention shall be that of the then members of the Board from that district.

(c) All producers and handlers within the district may participate in the convention: *Provided*, That producers who handle 50 percent or less of their own production may vote for producer members only, and producers who handle more than 50 percent of their own production may vote for handler members only; And *provided further*, That if a producer or handler is engaged in the production or handling of watermelons in more than one State or district, the producer or handler shall participate within the State or district in which the producer or handler so elects in writing to the Board and such election shall remain controlling until revoked in writing to the Board.

(d) The district convention shall conduct the selection process for the nominees in accordance with procedures to be adopted at each such convention, subject to the following requirements:

(1) There shall be two individuals nominated for each vacant position. Each nominee shall meet the qualifications set forth in the call; *Provided*, That producers who handle 50 percent or less of their own production may be nominated for producer positions only, and producers who handle more than more than 50 percent of their own production may be nominated for handler positions only; And *provided further*, That if a producer or handler is engaged in the production or handling of watermelons in more than one State or district, the producer or handler shall participate within the State or district in which the producer or handler so elects in writing to the Board and such election shall remain controlling until revoked in writing to the Board.

(2) No State in Districts 3, 4, 5, and 7 as currently constituted shall have more than three representatives concurrently on the Board.

(3) Each State represented at the district convention shall have one vote for each producer position and one vote for each handler position from the District on the Board, which vote shall be determined by the producers and handlers from that State by majority vote. Each State shall further have an additional vote for each five hundred thousand hundredweight volume as determined by the three year average annual crop production summary reports of the USDA, or if such reports are not published, then the three year average of the Board assessment reports; *Provided*, That for the first two calls for nominees, the USDA Crop Production Annual Summary Reports for 1979, 1980, and 1981 will be controlling as to any additional production volume votes.

§ 1210.322 Term of office.

(a) The term of office of Board members shall be three years, except that the members of the initial Board shall serve terms as follows: The four producers and four handlers from district 1 (south Florida) and district 6 (Texas), and the public member shall serve one-year initial terms; four producers and four handlers from district 2 (north Florida) and district 3 (Georgia and Alabama) shall serve two-year initial terms; and the remaining six producers and six handlers from districts 4, 5, and 7 shall serve three-year initial terms.

(b) The term of office for the initial Board shall begin immediately following appointment by the Secretary. Time in the interim period, from appointment until the term begins pursuant to this section, shall not count towards the initial "term of office". In subsequent years, the term of office shall begin on January 1 or such other period which may be approved by the Secretary.

(c) Board members shall serve during the term of office for which they are selected and have qualified, and until their successors are selected and have qualified.

(d) No member shall serve more than two successive terms; *Provided*, That those members serving initial terms of one year may serve two additional consecutive three-year terms.

§ 1210.323 Acceptance.

Each person nominated for membership on the Board shall qualify by filing a written acceptance with the Secretary. Such written acceptance shall accompany the nominations list required by § 1210.321.

§ 1210.324 Vacancies.

(a) In the event any member of the Board ceases to be a member of the category of members from which the member was appointed to the Board, such position shall automatically become vacant.

(b) If a member of the Board consistently refuses to perform the duties of a member of the Board, or if a member of the Board engages in acts of dishonesty or willful misconduct, the Board may recommend to the Secretary that the member be removed from office. If the Secretary finds the recommendation of the Board shows adequate cause, the Secretary shall remove such member from office. Further, without recommendation of the Board, a member may be removed by the Secretary upon showing of adequate cause, if the Secretary determines that the person's continual services would be detrimental to the purposes of the Act.

(c) To fill any vacancy caused by the failure of any person selected as a member of the Board to qualify, or in the event of the death, removal, resignation, or disqualification of any member, a successor shall be nominated and selected in the manner specified in § 1210.321, except that said nomination and replacement shall not be required if the unexpired term of office is less than six months. In the event of failure to provide nominees for such vacancies, the Secretary may appoint other eligible persons.

§ 1210.325 Procedure.

(a) Fifteen Board members shall constitute a quorum and any action of the Board shall require the concurring votes of a majority of those present and voting. At assembled meetings all votes shall be cast in person.

(b) For routine and noncontroversial matters which do not require deliberation and the exchange of views, and for matters of an emergency nature when there is not enough time to call an assembled meeting, the Board may act upon a majority of concurring votes of its members cast by mail, telegraph, telephone, or by other means of communication; *Provided*, That each member receives an accurate, full, and substantially identical explanation of each proposition. Telephone votes shall be promptly confirmed in writing. All votes shall be recorded in the Board minutes.

§ 1210.326 Compensation and reimbursement.

Board members shall serve without compensation but shall be reimbursed for reasonable expenses incurred by them in the performance of their duties as Board members.

§ 1210.327 Powers.

The Board shall have the following powers subject to § 1210.363:

(a) To administer the provisions of this Plan in accordance with its terms and conditions;

(b) To make rules and regulations to effectuate the terms and conditions of this Plan;

(c) To require its employees to receive, investigate, and report to the Secretary complaints of violations of this Plan; and

(d) To recommend to the Secretary amendments to this Plan.

§ 1210.328 Duties.

The Board shall, among other things, have the following duties:

(a) To meet, organize, and select from among its members a president and such other officers as may be necessary; to select committees and subcommittees of board members; to adopt such rules for the conduct of its business as it may deem advisable; and it may establish working committees of persons other than Board members.

(b) To employ such persons as it may deem necessary and to determine the compensation and define the duties of each; and to protect the handling of Board funds through fidelity bonds;

(c) To prepare and submit for the Secretary's approval, prior to the beginning of each fiscal period, a recommended rate of assessment and a fiscal period budget of the anticipated expenses in the administration of this Plan, including the probable costs of all programs and projects;

(d) To develop programs and projects, which must be approved by the Secretary before becoming effective, and enter into contracts or agreements, with the approval of the Secretary, for the development and carrying out of programs or projects of research, development, advertising or promotion, and the payment of the costs thereof with funds collected pursuant to this Plan;

(e) To keep minutes, books, and records which clearly reflect all of the acts and transactions of the Board. Minutes of each Board meeting shall be promptly reported to the Secretary;

(f) To prepare and submit to the Secretary such reports from time to time as may be prescribed for appropriate accounting with respect to the receipt and disbursement of funds entrusted to the Board;

(g) To cause the books of the Board to be audited by a certified public accountant at least once each fiscal period, and at such other time as the Board may deem necessary. The report of such audit shall show the receipt and expenditure of funds collected pursuant to this part. Two copies of each such report shall be furnished to the Secretary and a copy of each such report shall be made available at the principal office of the Board for inspection by producers and handlers;

(h) To investigate violations of the Plan and report the results of such investigations to the Secretary for appropriate action to enforce the provisions of the Plan;

(i) To periodically prepare, make public, and make available to producers and handlers reports of its activities carried out.

(j) To give the Secretary the same notice of meetings of the Board and its subcommittees as is given to its members;

(k) To act as intermediary between the Secretary and any producer or handler;

(l) To furnish the Secretary such information as the Secretary may request;

(m) To notify watermelon producers and handlers of all Board meetings through press releases or other means;

(n) To appoint and convene, from time to time, working committees drawn from producers, handlers and the public to assist in the development of research and promotion programs for watermelons; and

(o) To develop and recommend such rules and regulations to the Secretary for approval as may be necessary for the development and execution of programs or projects to effectuate the declared purpose of the Act.

RESEARCH AND PROMOTION

§ 1210.330 Policy and objective.

It shall be the policy of the Board to carry out an effective, continuous, and coordinated program of research, development, advertising, and promotion in order to:

(a) Strengthen watermelons' competitive position in the marketplace,

(b) Maintain and expand existing domestic and foreign markets, and

(c) Develop new or improved markets.

It shall be the objective of the Board to carry out programs and projects which will provide maximum benefit to the watermelon industry.

§ 1210.331 Programs and projects.

The Board shall develop and submit to the Secretary for approval any programs or projects authorized in this section. Such programs or projects shall provide for:

(a) The establishment, issuance, effectuation and administration of appropriate programs or projects for advertising and other sales promotion of watermelons designed to strengthen the position of the watermelon industry in the marketplace and to maintain, develop, and expand markets for watermelon;

(b) Establishing and carrying out research and development projects and studies to the end that the acquisition of knowledge pertaining to watermelons or their consumption and use may be encouraged or expanded, or to the end that the marketing and use of watermelons may be encouraged, expanded, improved, or made more efficient: *Provided*, That quality control, grade standards, supply management programs or other programs that would otherwise limit the right of the individual watermelon producer to produce watermelons shall not be conducted under, or as a part of, this Plan;

(c) The development and expansion of watermelon sales in foreign markets;

(d) A prohibition on advertising or other promotion programs that make any reference to private brand names or use false or unwarranted claims on behalf of watermelons or false or unwarranted statements with respect to the attributes or use of any competing product;

(e) Periodic evaluation by the Board of each program or project authorized under this Plan to insure that each program or project contributes to an effective and coordinated program of research and promotion and submission of such evaluation to the Secretary. If the Board or the Secretary finds that a program or project does not further the purposes of the Act, then the Board or the Secretary shall terminate such program or project; and

(f) The Board to enter into contracts or make agreements for the development and carrying out of research and promotion and pay for the costs of such contracts or agreements with funds collected pursuant to § 1210.341.

EXPENSES AND ASSESSMENTS

§ 1210.340 Budget and expenses.

(a) Prior to the beginning of each fiscal period, or as may be necessary thereafter, the Board shall prepare and recommend a budget on a fiscal period basis of its anticipated expenses and disbursements in the administration of this Plan, including probable costs of research, development, advertising, and promotion. The Board shall also recommend a rate of assessment calculated to provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in § 1210.344.

(b) The Board is authorized to incur such expenses for research, development, advertising, or promotion of watermelons, such other expenses for the administration, maintenance, and functioning of the Board as may be authorized by the Secretary, and any referendum and administrative costs incurred by the Department of Agriculture. The funds to cover such expenses shall be paid from assessments collected pursuant to § 1210.341.

§ 1210.341 Assessments.

(a) During the effective period of this subpart, assessments shall be levied on all watermelons produced and all watermelons first handled for consumption as human food. No more than one assessment on a producer nor more than one assessment on a handler shall be made on any lot of watermelons. The handler shall be assessed an equal amount on a per unit basis as the producer. If a person performs both producing and handling functions, both assessments shall be paid by such person.

(b) Assessment rates shall be fixed by the Secretary in accordance with section 1647(f), of the Act; *Provided*, That the maximum assessment shall not exceed two cents per hundredweight for producers and two cents per hundredweight for handlers. No assessments shall be levied on watermelons grown by producers of less than five acres of watermelons.

(c) Each handler, as defined, is responsible for payment to the Board of both the producer's and the handler's assessment pursuant to regulations issued hereunder. The handler may collect producer assessments from the producer or deduct such assessments from the proceeds paid to the producer on whose watermelons the assessments are made. The handler shall maintain separate records for each producer's watermelons handled, including watermelons produced by said handler. In addition, the handler shall indicate the total quantity of watermelons handled by the handler, including those that are exempt under this Plan, and such other information as may be prescribed by the Board.

(d) Assessments shall be paid to the Board at such time and in such manner as the Board, with the Secretary's approval, directs, pursuant to regulations issued hereunder. Such regulations may provide for different handlers or classes of handlers and different handler payment and reporting schedules to recognize differences in marketing practices or procedures used in any State or production area.

(e) There shall be a late payment charge imposed on any handler who fails to remit to the Board the total amount for which any such handler is liable on or before the payment due date established by the Board under paragraph (d) of this section. The amount of the late payment charge shall be set by the Board subject to approval by the Secretary.

(f) There shall also be imposed on any handler subject to a late payment charge, an additional charge in the form of interest on the outstanding portion of any amount for which the handler is liable. The rate of such interest shall be prescribed by the Board subject to approval by the Secretary.

(g) The Board is hereby authorized to accept advance payment of assessments by handlers that shall be credited toward any amount for which the handlers may become liable. The

Board shall not be obligated to pay interest on any advance payment.

(h) The Board is hereby authorized to borrow money for the payment of administrative expenses subject to the same fiscal, budget, and audit controls as other funds of the Board.

(i) The Board may authorize other organizations to collect assessments in its behalf with the approval of the Secretary. Any reimbursement by the Board for such services shall be based on reasonable charges for services rendered.

§ 1210.342 Exemption from assessment.

The Board may exempt watermelons used for nonfood purposes from the provisions of this Plan and shall establish adequate safeguards against improper use of such exemptions.

§ 1210.343 Producer and handler refunds.

Any producer or handler against whose watermelons an assessment is made and collected under this Plan and who is not in favor of supporting the research, development, advertising, and promotion program provided for under this Plan shall have the right to demand and receive from the Board a refund of such assessment upon submission of proof satisfactory to the Board that the producer or handler paid the assessment for which refund is sought. Any such demand shall be made personally by such producer or handler on a form which the producer or handler shall sign and within a time period prescribed by the Board pursuant to regulations. Such time period shall give the producer or handler at least 90 days from the date of collection to submit the refund request form to the Board. Any such refund shall be made within 60 days after demand therefor.

§ 1210.344 Operating reserve.

The Board may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in a reserve so established; *Provided*, That funds in the reserve shall not exceed approximately two fiscal periods' expenses. Such reserve funds may be used to defray any expenses authorized under this subpart.

REPORTS, BOOKS, AND RECORDS

§ 1210.350 Reports.

Each handler shall maintain a record with respect to each producer for whom watermelons were handled and for watermelons produced and handled by the handler. Handlers shall report to the Board at such times and in such manner as the Board may prescribe by regulations whatever information as may be necessary in order for the Board to perform its duties. Such reports may include, but shall not be limited to, the following information:

(a) Total quantity of watermelons handled for each producer and by the handler, including those which are exempt under this Plan;

(b) Total quantity of watermelons handled for each producer and by the handler, on which the producer assessment was collected;

(c) Name and address of each person from whom an assessment was collected, the amount collected from each person, and the date such collection was made; and

(d) Name and address of each person claiming exemption from assessment and a copy of each such person's claim of exemption.

§ 1210.351 Books and records.

Each handler subject to this Plan shall maintain, and during normal business hours make available for inspection by employees of the Board or Secretary, such books and records as are necessary to carry out the provisions of this Plan and the regulations issued thereunder, including such records as are necessary to verify any required reports. Such records shall be maintained for two years beyond the fiscal period of their applicability.

§ 1210.352 Confidential treatment.

(a) All information obtained from the books, records, or reports required to be maintained under §§ 1210.350 and 1210.351 shall be kept confidential and shall not be disclosed to the public by any person. Only such information as the Secretary deems relevant shall be disclosed to the public and then only in a suit or administrative hearing brought at the direction, or on the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this Plan: Except that nothing in this subpart shall be deemed to prohibit:

(1) The issuance of general statements based on the reports of a number of handlers subject to this Plan if such statements do not identify the information furnished by any person; or

(2) The publication by direction of the Secretary of the name of any person violating this Plan together with a statement of the particular provisions of this Plan violated by such person.

(b) Any disclosure of confidential information by any employee of the Board, except as required by law, shall be considered willful misconduct.

MISCELLANEOUS

§ 1210.360 Right of the Secretary.

All fiscal matters, programs or projects, rules or regulations, reports, or other substantive actions proposed and prepared by the Board shall be submitted to the Secretary for approval.

§ 1210.361 Personal liability.

No member or employee of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member or employee, except for acts of dishonesty or willful misconduct.

§ 1210.362 Influencing government action.

No funds collected by the Board under this plan shall in any manner be used for the purpose of influencing governmental policy or action, except for making recommendations to the Secretary as provided in this subpart.

§ 1210.363 Suspension or termination.

(a) Whenever the Secretary finds that this Plan or any provision thereof obstructs or does not tend to effectuate the declared policy of the Act, the Secretary shall terminate or suspend the operation of this Plan or such provision thereof.

(b) The Secretary may conduct a referendum at any time, and shall hold a referendum on request of the Board or of 10 percent or more of the watermelon producers and handlers to determine if watermelon producers and handlers favor termination or suspension of this Plan. The Secretary shall suspend or terminate this Plan at the end of the marketing year whenever the Secretary determines that the suspension or termination is favored by a majority of the watermelon producers and handlers voting in such referendum who, during a representative period determined by the Secretary, have been engaged in production or handling of watermelons and who produced or handled more than 50 percent of the volume of watermelons produced or handled by those producers and handlers voting in the referendum. For purposes of this section, the vote of a person who both produces and handles watermelons will be counted as a producer vote if that person handles 50 percent or less of that person's own production during a representative period, and will be counted as a handler vote if that person handles more than 50 percent of that person's own production during a representative period. Any such referendum shall be conducted at county extension offices.

§ 1210.364 Proceedings after termination.

(a) Upon the termination of this Plan, the Board shall recommend not more than five of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all funds and property then in possession or under control of the Board, including claims for any funds unpaid or property not delivered or any other claim existing at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contracts or agree-

ments entered into by it pursuant to § 1210.328(d);

(3) From time-to-time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to person or persons as the Secretary may direct; and

(4) Upon the request of the Secretary execute such assignments or other instruments necessary or appropriate to vest in such person or persons full title and right to all the funds, property, and claims vested in the Board or the trustees pursuant to this section.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this section shall be subject to the same obligation imposed upon the Board and upon the trustees.

(d) A reasonable effort shall be made by the Board or its trustees to return to producers and handlers any residual funds not required to defray the necessary expenses of liquidation. If it is found impractical to return such remaining funds to producers and handlers, such funds shall be disposed of in such manner as the Secretary may determine to be appropriate.

§ 1210.365 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this Plan or any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this Plan or any regulation issued thereunder; or

(b) Release or extinguish any violation of this Plan or any regulation issued thereunder; or

(c) Affect or impair any rights or remedies of the United States, or of the Secretary, or of any other person with respect to any such violation.

§ 1210.366 Separability.

If any provision of this Plan is declared invalid or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of this Plan or applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1210.367 Patents, copyrights, inventions, and publications.

Any patents, copyrights, inventions, product formulations, or publications developed through the use of funds collected under the provisions of this Plan shall be the property of the United States government as represented by the Board. Funds generated by such patents, copyrights, inventions, product formulations, or publications shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board. Upon termination of this part, § 1210.364 shall apply to determine the disposition of all such property.

Subpart—Procedures for Nominating Producer and Handler Members to the National Watermelon Promotion Board

SOURCE: 54 FR 38205, Sept. 15, 1989 (Interim), unless otherwise noted.

§ 1210.400 Terms defined.

Unless otherwise defined in this subpart, definitions of terms used in this subpart shall have the same meaning as the definitions of such terms which appear in Subpart—Watermelon Research and Promotion Plan.

§ 1210.401 District conventions.

(a) Except for the initial district convention in each district, which will be called and opened by a representative of the Secretary, the Board shall call and open all district conventions.

(b) District conventions are to be held to nominate producers and handlers as candidates for membership on the National Watermelon Promotion Board. The Board consists of 14 producers, 14 handlers, and 1 public member appointed by the Secretary. Each district, as defined in § 1210.320 of the Plan, is entitled to two producer and two handler members on the Board.

(c) There shall be two individuals nominated for each vacant position. In multi-State districts, no one State shall have nominees for more than three of the four district positions on the Board.

(d) All producers and handlers within each district may participate in that district's convention: *Provided*, That they meet the eligibility provisions set forth in § 1210.402 of this subpart.

(e) The convention chairperson shall be elected as provided in § 1210.403(b) of this subpart.

(f) The Board member nomination process shall be conducted by the chairperson in conformance with the provisions of § 1210.321 of the Plan and § 1210.403 of this subpart. At the conclusion of the district convention for the initial term of office, the chairperson will provide the Secretary with:

(1) The identification of that district's two nominees for each producer and handler position on the Board, and

(2) A typed copy of the district convention's minutes.

This information must be provided by the chairperson to the Department representative identified in the call for district convention in a manner that will ensure receipt, at the address specified in the call, within 14 calendar days of district convention's completion. For subsequent terms of office, the chairperson will provide the above-described information to both the Board and the Department official. Further, the chairperson will arrange for completion of qualification statements and other specified information by each nominee and forward such to the Secretary within 14 calendar days of completion of the district convention.

§ 1210.402 Voter and board member nominee eligibility.

(a) All producers and all handlers within a district may participate in their district convention for the purpose of nominating candidates for appointment to the Board: *Provided*, That producers who handle 50 percent or less of their own production may vote for producer nominees and serve as producer nominees only, and producers who handle more than 50 percent of their own production are considered to be handlers and may vote for handler nominees and serve as handler nominees only: and *Provided further*, That if a producer or handler is engaged in the production or handling of watermelons in more than one State or district, the producer or handler shall participate within the State or district in which the producer or handler so elects in writing to the Board and such election shall remain controlling until revoked in writing to the Board. For the purpose of participation in initial nominating conventions, such election shall be made in writing, at the address provided, to the Department official identified in the call for a district convention.

(b) Any individual, group of individuals, partnership, corporation, association, cooperative or any other entity which is engaged in the production or first handling of watermelons is considered a person and as such is entitled to only one vote, except that such person may cast proxy votes as provided in § 1210.403 of this subpart.

(c) All producers and handlers attending their district conventions may be candidates for one or more of the positions of State spokesperson, district convention chairperson, and producer or handler nominee.

§ 1210.403 Voting procedures.

(a) Proxy voting by producers and handlers for producer and handler nominees shall be permitted at all district conventions: *Provided*, That producers may cast proxy votes for producers only, and handlers may cast proxy votes for handlers only. In nonmulti-State districts, proxy voting shall be permitted for all producer and handler nominee balloting to determine the districts' nominees. In multi-State districts, proxy voting shall be permitted for all producers and handlers participating in a State's balloting to determine the State's nominees. No other proxy voting, such as for district convention chairperson, shall be allowed. Any person wanting to cast proxy votes must demonstrate authorization to do so. Authority to cast a proxy vote on behalf of another person shall be demonstrated through documentation containing:

(1) The proxy voter's name, address, and telephone number;

(2) Signature and date signed;

(3) A certification identifying the proxy voter as a producer or a handler; and

(4) A statement identifying the person being given authority by the proxy voter to cast the proxy vote.

All proxy documentation must be received by the Board at its headquarters address at least two weeks before the district convention is scheduled to convene. For the purpose of the initial district convention, all proxy documentation must be forwarded to the Department representative identified in the call for the district convention in a manner that will ensure receipt, at the address specified in the call, at least 72 hours before the district convention is scheduled to convene. The Board, or in the case of the initial conventions the Department representative identified in the call or other representative of the Department, may challenge any proxy vote and disqualify any challenged vote for cause. In the case of duplicate proxy authorizations by any person, only the first authorization, determined by date will be allowed. In the case of duplicate dates, the proxy which is received first will be allowed.

(b) In non-multi-State districts, convention chairpersons shall be elected by a majority vote of the eligible voters in attendance. In multi-State districts, the election shall be by majority vote of all States present with each State's vote(s) determined by a majority vote of the eligible voters of that State in attendance. Each such State is entitled to one vote, plus one additional vote for each 500,000 hundredweight volume of production in the State as determined by the three-year average annual crop production summary reports of the Department or, if such reports are not published, then the three-year average of the Board's assessment reports: *Provided*, That for the first two conventions, the Department's Crop Production Annual Summary Reports for 1979, 1980, and 1981 will be controlling as to any additional production volume votes.

(c) In multi-State districts 3, 4, 5 and 7, the convention chairperson will direct the eligible producer voters and handler voters from each State to caucus separately for the purpose of electing a State spokesperson for each group. Election of each State spokesperson shall be by simple majority of all individual voters in attendance. In lieu of written ballots, a State spokesperson may be elected by voice vote or a show of hands. The role of the State spokesperson is to coordinate State voting and to cast all State votes.

(d) Convention chairpersons will coordinate the entire producer and handler nomination process. In conducting the nomination process, each convention chairperson will ensure that:

(1) Voting for producer nominees is limited to producers, and voting for handler nominees is limited to handlers; and

(2) Producer candidates for nomination are producers, and handler candidates for nomination are handlers.

(e) Voting, for producer and handler nominees, in non-multi-State districts shall be on the basis of one vote per person, except that persons authorized to cast proxy votes shall be allowed to cast all proxy votes not disallowed by the Board or the Department. Election of nominees shall be on the basis of a simple majority of all eligible votes cast.

(f) Voting for producer and handler nominees in multi-State districts shall be on a State by State basis. Producers and handlers from each State shall caucus separately, at the district convention, for the purpose of determining which nominees shall receive their State's vote(s) for membership on the Board. Each State's vote(s) shall be based on a simple majority of all votes (including proxy votes) cast by producers or handlers voting in their State's caucus. Each State represented at a multi-State district convention shall have one vote for each producer position and one vote for each handler position from the district on the Board. Each State shall further have an additional vote toward each position for each 500,000 hundredweight volume of production in the State as determined by the three-year average annual crop production summary reports of the Department or, if such reports are not published, then the three-year average

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(g) During the voting for convention
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Board member nominee, should no
andidate receive the required simple
najority on the first ballot, the
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y dropping one or more of the lowest
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lates. The balloting will be repeated
intil the position is filled.

(h) Two nominees shall be elected
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andler positions from each district on
he Board. There shall be a separate
lection for each nominee. No individ-
ials elected as a nominee for Board
nembership may be a candidate on
ubsequent Board member nominee
allots (i.e., four different producer
iames and four different handler
iames must be submitted, as nominees
rom each district, to the Secretary of
griculture). The first nominee elect-
d to each position shall be the dis-
rict's first choice nominee for each
roducer and each handler position on
he Board.

1210.404 Paperwork Reduction Act assigned number.

The OMB has approved the infor-
nation collection request contained in
his subpart under the provisions of 44
J.S.C. chapter 35, and OMB Control
Number 0581-0158 has been assigned.

Subpart—Rules and Regulations

SOURCE: 55 FR 13256, Apr. 10, 1990, unless
therwise noted.

DEFINITIONS

1210.500 Terms defined.

Unless otherwise defined in this sub-
art, definitions of terms used in this
ubpart shall have the same meaning
s the definitions of such terms which appear in subpart—Watermelon Research and Promotion Plan.

GENERAL

§§ 1210.501—1210.502 [Reserved]

§ 1210.503 Public member nominations and selection.

(a) The public member shall be nominated by the producer members and handler members of the Board. The public member shall have no direct financial interest in the commercial production or marketing of watermelons except as a consumer and shall not be a director, stockholder, officer or employee of any firm so engaged. The Board shall nominate two individuals for the public member position. Voting for public member nominees shall require a quorum of the Board and shall be on the basis of one vote per Board member. Election of nominees shall be on the basis of a simple majority of those present and voting. Such election shall be held prior to August 1, 1990, and every third August first thereafter. The Board may prescribe such additional qualifications, administrative rules and procedures for selection and voting for public member nominees as it deems necessary and the Secretary approves.

(b) Each person nominated for the position of public member on the Board shall qualify by filing a written acceptance with the Secretary within 14 calendar days of completion of the Board meeting at which public member nominees were selected.

§ 1210.504 Contracts.

The Board, with the approval of the Secretary, may enter into contracts or make agreements with persons for the development and submission to it of programs or projects authorized by the Plan and for carrying out such programs or projects. Contractors shall agree to comply with the provisions of this part. Subcontractors who enter into contracts or agreements with a Board contractor and who receive or otherwise utilize funds allocated by the Board shall be subject to the provisions of this part. All records of contractors and subcontractors applicable to contracts entered into by the

Board are subject to audit by the Secretary.

§ 1210.505 Department of Agriculture costs.

Pursuant to § 1210.340, the Board shall reimburse the Department of Agriculture for referendum and administrative costs incurred by the Department with respect to the Plan. The Board shall pay those costs incurred by the Department for the conduct of Department duties under the Plan as determined periodically by the Secretary. The Department will bill the Board quarterly and payment shall be due promptly after the billing of such costs. Funds to cover such expenses shall be paid from assessments collected pursuant to § 1210.341.

ASSESSMENTS

§ 1210.515 Levy of assessments.

(a) An assessment of two cents per hundredweight shall be levied on all watermelons produced for ultimate consumption as human food and an assessment of two cents per hundredweight shall be levied on all watermelons first handled for ultimate consumption as human food.

(b) Watermelons used for nonhuman food purposes are exempt from assessment requirements but are subject to the safeguard provisions of § 1210.521.

§ 1210.516 [Reserved]

§ 1210.517 Determination of handler.

The producer and handler assessments on each lot of watermelons handled shall be paid by the handler. Unless otherwise provided in this section, the handler responsible for payment of assessments shall be the first handler of such watermelons. The first handler is the person who initially performs a handling function as heretofore defined. Such person may be a fresh shipper, processor, or other person who first places the watermelons in the current of commerce.

(a) The following examples are provided to aid in the identification of first handlers:

(1) Producer grades, packs, and sells watermelons of own production to a handler. In this instance, it is the handler, not the producer, who places the watermelons in the current of commerce. The handler is responsible for payment of the assessments.

(2) Producer packs and sells watermelons of that producer's own production from the field, roadside stand, or storage to a consumer, trucker, retail or wholesales outlet, or other buyer who is not a handler of watermelons. The producer places the watermelons in the current of commerce and is the first handler.

(3) Producer delivers field-run watermelons of own production to a handler for preparation for market and entry into the current of commerce. The handler, in this instance, is the first handler, regardless of whether the handler subsequently handles such watermelons for the account of the handler or for the account of the producer.

(4) Producer delivers field-run watermelons of own production to a handler for preparation for market and return to the producer for sale. The producer in this instance, is the first handler, except when the producer subsequently sells such watermelons to a handler.

(5) Producer delivers watermelons of own production to a handler who takes title to such watermelons. The handler who purchases such watermelons from the producer is the first handler.

(6) Producer supplies watermelons to a cooperative marketing association which sells or markets the watermelons and makes an accounting to the producer, or pays the proceeds of the sale to the producer. In this instance, the cooperative marketing association becomes the first handler upon physical delivery to such cooperative.

(7) Handler purchases watermelons from a producer's field for the purpose of preparing such watermelons for market or for transporting such watermelons to storage for subsequent handling. The handler who purchases such watermelons from the producer is the first handler.

(8) Broker receives watermelons from a producer and sells such watermelons in the Broker's company name. In this instance, the Broker is the first

andler, regardless of whether the Broker took title to such watermelons.

(9) Broker, without taking title or possession of watermelons, sells such watermelons in the name of the producer. In this instance, the producer is the first handler.

(10) Processor utilizes watermelons of own production in the manufacture of rind pickles, frozen, dehydrated, extracted, or canned products for human consumption. In so handling watermelons the processor is the first handler.

(11) Processor purchases watermelons from the producer thereof. In this instance, the processor is the first handler even though the producer may have graded, packed, or otherwise handled such watermelons.

(b) In the event of a handler's death, bankruptcy, receivership, or incapacity to act, the representative of the handler or the handler's estate shall be considered the handler of the watermelons for the purpose of this subpart.

§ 1210.518 Payment of assessments.

(a) *Time of payment.* The assessment shall become due at the time the first handler handles the watermelons for non-exempt purposes.

(b) *Responsibility for payment.* The first handler is responsible for payment of both the producer's and the handler's assessment. The handler may collect the producer's assessment from the producer, or deduct such producer's assessment from the proceeds paid to the producer on whose watermelons the producer assessment is made. Any such collection or deduction of producer assessment shall be made not later than the time when the first handler handles the watermelons.

(c) *Payment direct to the Board.* (1) Except as provided in paragraph (e) of this section, each handler shall remit the required producer and handler assessments, pursuant to § 1210.341 of the Plan, directly to the Board not later than 20 days after the end of the month such assessments are due. Remittance shall be by check, draft, or money order payable to the National Watermelon Promotion Board, or NWPB, and shall be accompanied by a report, preferably on Board forms, pursuant to § 1210.350. To avoid late payment charges, the assessments must be mailed to the Board and postmarked within 20 days after the end of the month such assessments are due.

(2) Pursuant to § 1210.350 of the Plan, each handler shall file with the Board a report for each month that assessable watermelons were handled. All handler reports shall contain at least the following information:

(i) The handler's name, address, and telephone number;

(ii) Date of report (which is also the date of payment to the Board);

(iii) Period covered by the report;

(iv) Total quantity of watermelons handled during the reporting period;

(v) Date of last report remitting assessments to the Board; and

(vi) Listing of all persons for whom the handler handled watermelons, their addresses, hundredweight handled, and total assessments remitted for each producer. In lieu of such a list, the handler may substitute copies of settlement sheets given to each person or computer generated reports, provided such settlement sheets or computer reports contain all the information listed above.

(vii) Name, address, and hundredweight handled for each person claiming exemption for assessment.

(viii) If the handler handled watermelons for persons engaged in the growing of less than five acres of watermelons, the report shall indicate the name and address of such person and the quantity of watermelons handled for such person.

(3) The words "final report" shall be shown on the last report at the close of the handler's marketing season or at the end of each fiscal period if such handler markets assessable watermelons on a year-round basis.

(4) Prepayment of assessments.

(i) In lieu of the monthly assessment and reporting requirements of paragraph (b) of this section, the Board may permit handlers to make an advance payment of their total estimated assessments for the crop year to the Board prior to their actual determination of assessable watermelons. The

Board shall not be obligated to pay interest on any advance payment.

(ii) Handlers using such procedures shall provide a final annual report of actual handling and remit any unpaid assessments not later than 20 days after the end of the last month of the designated handler's marketing season or at the end of each fiscal period if such handler markets assessable watermelons on a year-round basis.

(iii) Handlers using such procedures shall, after filing a final annual report, receive a reimbursement of any overpayment of assessments.

(iv) Handlers using such procedures shall, at the request of the Board to verify a producer's refund claim, provide the Board with a handling report on any and all producers for whom the handler has provided handling services but has not yet filed a handling report with the Board.

(v) Specific requirements, instructions, and forms for making such advance payments shall be provided by the Board on request.

(d) *Late payment charges and interest.* (1) A late payment charge shall be imposed on any handler who fails to make timely remittance to the Board of the total producer and handler assessments for which any such handler is liable. Such late payment shall be imposed on any assessments not received before the thirtieth day after the end of the month such assessments are due. This one-time late payment charge shall be 10 percent of the assessments due before interest charges have accrued. The late payment charge will not be applied to any late payments postmarked within 20 days after the end of the month such assessments are due.

(2) In addition to the late payment charge, one and one-half percent per month interest on the outstanding balance, including the late payment charge and any accrued interest, will be added to any accounts delinquent beyond 30 days after the twentieth day after the end of the month such assessments are due. Such interest will continue monthly until the outstanding balance is paid to the Board.

(e) *Payment through cooperating agency.* The Board may enter into agreements, subject to approval of the Secretary, authorizing other organizations, such as a regional watermelon association or State watermelon board, to collect assessments in its behalf. In any State or area in which the Board has entered into such an agreement, the designated handler shall pay the assessment to such agency in the time and manner, and with such identifying information as specified in such agreement. Such an agreement shall not provide any cooperating agency with authority to collect confidential information from handlers or producers. To qualify, the cooperating agency must on its own accord have access to all information required by the Board for collection purposes. If the Board requires further evidence of payment than provided by the cooperating agency, it may acquire such evidence from individual handlers. All such agreements are subject to the requirements of the Act, Plan, and all applicable rules and regulations under the Act and the Plan.

[55 FR 13256, Apr. 10, 1990; 55 FR 20443, May 17, 1990]

§ 1210.519 Failure to report and remit.

Any handler who fails to submit reports and remittances according to the provisions of § 1210.518 shall be subject to appropriate action by the Watermelon Board which may include one or more of the following actions:

(a) Audit of the handler's books and records to determine the amount owed the Watermelon Board.

(b) Establishment of an escrow account for the deposit of assessments collected. Frequency and schedule of deposits and withdrawals from the escrow account shall be determined by the Watermelon Board with the approval of the Secretary.

(c) Referral to the Secretary for appropriate enforcement action.

§ 1210.520 Refunds.

Each watermelon producer or handler against whose watermelons an assessment became payable and was paid pursuant to this subpart may obtain a refund of the assessment amount for any calendar month by following the procedures prescribed in this section.

(a) *Application form.* A producer or handler shall obtain a refund application from the Board by written request which shall bear the producer's or handler's signature. For partnerships, corporations, associations, or other business entities, a partner or an officer of the entity must sign the request and indicate his or her title.

(b) *Submission of refund application to the Board.* Any producer or handler requesting a refund shall mail an application on the prescribed form to the Board within 90 days from the date the assessment became payable and was paid pursuant to § 1210.518. The refund application shall show the following:

(1) Producer's name and address;

(2) Handler's or Handlers' name(s) and address(es);

(3) Number of hundredweight of watermelon on which refund is requested;

(4) Total amount to be refunded;

(5) Proof of payment as described below; and

(6) Producer's or handler's signature.

Where more than one producer or handler shared in the assessment payment, the refund application shall show, in addition to other required information, the names, addresses and proportionate shares of such producers or handlers and the signature of each. Separate refund requests must be made by the producer and the handler where refunds are requested by both on the same lot of watermelons, except when the producer and handler are the same person. Requests for refund of assessments paid may be in part or total.

(c) *Proof of payment of assessment.* Evidence of payment of assessments satisfactory to the Board, such as the receipt or a copy of the receipt given to the producer by the handler, or a copy of the handler's report, shall accompany the producer's or handler's refund application. Evidence submitted with refund applications shall not be returned to the applicant.

(d) *Payment of refund.* Within 60 days from the date the properly executed application for refund is received by the Board, the Board shall make remittance to the applicant. For joint applications, the remittance shall be made payable jointly.

§ 1210.521 Reports of disposition of exempted watermelons.

The Board may require reports by handlers on the handling and disposition of exempted watermelons and/or on the handling of watermelons for persons engaged in growing less than five acres of watermelons. Authorized employees of the Board or the Secretary may inspect such books and records as are appropriate and necessary to verify the reports on such disposition.

RECORDS

§ 1210.530 Retention period for records.

Each handler required to make reports pursuant to this subpart shall maintain and retain for at least 2 years beyond the marketing year of their applicability:

(a) One copy of each report made to the Board; and

(b) Such records as are necessary to verify such reports.

§ 1210.531 Availability of records.

Each handler required to make reports pursuant to this subpart shall make available for inspection and copying by authorized employees of the Board or the Secretary during regular business hours, such records as are appropriate and necessary to verify reports required under this subpart.

§ 1210.532 Confidential books, records, and reports.

All information obtained from the books, records, and reports of handlers and all information with respect to refunds of assessments made to individual producers and handlers shall be kept confidential in the manner and to the extent provided for in § 1210.352.

MISCELLANEOUS

§ 1210.540 Paperwork Reduction Act assigned number.

The information collection and recordkeeping requirements contained in the part have been approved by the

Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0581-0158.

PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

Subpart A—Pork Promotion, Research, and Consumer Information Order

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MISCELLANEOUS

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AUTHORITY: 7 U.S.C. 4801-4819.

Subpart A—Pork Promotion, Research, and Consumer Information Order

SOURCE: 51 FR 31903, Sept. 5, 1986, unless otherwise noted.

DEFINITIONS

§ 1230.1 Act.

"Act" means the Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801-4819) and any amendments thereto.

§ 1230.2 Department.

"Department" means the United States Department of Agriculture.

§ 1230.3 Secretary.

"Secretary" means the Secretary of Agriculture of the United States or any other officer or employee of the Department of Agriculture to whom authority has been delegated or may hereafter be delegated to act in the Secretary's stead.

§ 1230.4 Board.

"Board" means the National Pork Board established pursuant to § 1230.50.

§ 1230.5 Consumer information.

"Consumer information" means an activity intended to broaden the understanding of the sound nutritional attributes of pork and pork products, including the role of pork and pork products in a balanced, healthy diet.

§ 1230.6 Council.

"Council" means the National Pork Producers Council, a nonprofit corporation of the type described in section 501(c)(5) of the Internal Revenue Code of 1954 and incorporated in the State of Iowa.

§ 1230.7 Customs Service.

"Customs Service" means the United States Customs Service of the United States Department of Treasury.

§ 1230.8 Delegate Body.

"Delegate Body" means the National Pork Producers Delegate Body established pursuant to § 1230.30.

§ 1230.9 Fiscal period.

"Fiscal period" means the 12-month period ending on December 31 or such other consecutive 12-month period as the Secretary or Board may determine.

§ 1230.10 Imported.

"Imported" means entered, or withdrawn from a warehouse for consumption, in the customs territory of the United States.

§ 1230.11 Imported pork and pork products.

"Imported pork and pork products" means products which are imported into the United States which the Secretary determines contain a substantial amount of pork, including those products which have been assigned one or more of the following numbers in Schedule 1 of the Tariff Schedules of the United States Annotated (1985): 106.4020; 106.4040; 106.8000; 106.8500; 107.1000; 107.1500; 107.3020; 107.3040; 107.3060; 107.3515; 107.3525; 107.3540; and 107.3560.

§ 1230.12 Importer.

"Importer" means a person who imports porcine animals, pork, or pork products into the United States.

§ 1230.13 Market.

"Market" means to sell, slaughter for sale, or otherwise dispose of a porcine animal in commerce.

§ 1230.14 Market value.

"Market value" means, with respect to porcine animals which are sold, the price at which they are sold. With respect to porcine animals slaughtered for the sale by the producer, the term means the most recent annual seven-market average for barrows and gilts, as published by the Department. With respect to imported porcine animals, the term means the declared value. With respect to imported pork and pork products, the term means an amount which represents the value of the live porcine animals from which the pork or pork products were derived, based upon the most recent annual seven-market average for barrows and gilts, as published by the Department.

§ 1230.15 Part and subpart.

"Part" means the Pork Promotion, Research, and Consumer Information Order and all rules, regulations, and supplemental orders issued thereunder, and the aforesaid order shall be a "subpart of such part.

§ 1230.16 Person.

"Person" means any individual, group of individuals, partnership, corporation, association, organization, cooperative, or other entity.

§ 1230.17 Plans and projects.

"Plans and projects" means promotion, research, and consumer information plans, studies, or projects.

§ 1230.18 Porcine animal.

"Porcine animal" means a swine, that is raised as (a) a feeder pig, that is, a young pig sold to another person to be finished for slaughtering over a period of more than 1 month; (b) for breeding purposes as seed stock and included in the breeding herd; and (c) a market hog, slaughtered by the producer or sold to be slaughtered, usually within 1 month of such transfer.

§ 1230.19 Pork.

"Pork" means the flesh of a porcine animal.

§ 1230.20 Pork product.

"Pork product" means an edible product produced or processed in whole or in part from pork.

§ 1230.21 Producer.

"Producer" means a person who produces porcine animals in the United States for sale in commerce.

§ 1230.22 Promotion.

"Promotion" means any action, including but not limited to paid advertising and retail or food service merchandising, taken to present a favorable image for porcine animals, pork, or pork products to the public, or to educate producers with the intent of improving the competitive position and stimulating sales of porcine animals, pork, or pork products.

§ 1230.23 Research.

"Research" means any action designed to advance, expand, or improve the image, desirability, nutritional value, usage, marketability, production, or quality of porcine animals, pork, or pork products, including the dissemination of the results of such research.

§ 1230.24 State.

"State" means each of the 50 States.

§ 1230.25 State association.

"State association" means the single organization of producers in a State that is organized under the laws of that State and is recognized by the chief executive officer of such State as representing such State's producers. If no such organization exists in a State as of January 1, 1986, the Secretary may recognize an organization that represents not fewer than 50 producers who market annually an aggregate of not less than 10 percent of the pounds of porcine animals marketed in such State. The Secretary may cease to recognize a State association and instead recognize another organization of producers in a State as that State's association if the Secretary determines either that a majority of the members of the existing State association are not producers or that a majority of the members of the other organization seeking recognition are producers and that such organization better represents the economic interests of producers.

§ 1230.26 State where produced.

"State where produced" means with respect to a porcine animal marketed as a feeder pig or as breeding stock, the State in which that porcine animal was born, and with respect to a porcine animal that is marketed as a market hog, the State in which that porcine animal was fed for market.

NATIONAL PORK PRODUCERS DELEGATE BODY

§ 1230.30 Establishment and membership.

(a) There is hereby established a National Pork Producers Delegate Body which shall consist of producers and importers appointed by the Secretary.

(b)(1) At least two producer members shall be allocated to each State, but any State that has more than 300 but less than 601 shares shall receive three producer members; each State with more than 600 but less than 1,001 shares shall receive four producer members and each State with more than 1,000 shares shall receive an additional member in excess of four for each 300 additional shares in excess of 1,000 shares, rounded to the nearest 300.

(2) For the initial Delegate Body, shares shall be assigned to each State on the basis of one share for each $400,000 of market value (rounded to the nearest $400,000) attributable to porcine animals produced in such State (as determined by the Secretary based on the annual average of market value in the most recent three years for which data are available).

(3) In each fiscal period thereafter, shares shall be assigned to each State on the basis of one share for each $1,000 (rounded to the nearest $1,000) of the net amount of assessments attributable to such State.

(c)(1) The number of importer members to be appointed shall be determined by allocating three such members for the first 1,000 shares. Importers shall receive an additional member in excess of three for each 300 shares in excess of 1,000 shares, rounded to the nearest 300.

(2) For the initial Delegate Body, shares shall be assigned to importers on the basis of one share for each $575,000 (rounded to the nearest $575,000) of the market value of imported porcine animals, pork, or pork products (as determined by the Secretary, based on the three most recent years for which data is available).

(3) In each fiscal period thereafter, shares shall be assigned to importers on the basis of one share for each $1,000 (rounded to the nearest $1,000) of the net amount of assessments attributable to importers.

§ 1230.31 Nomination and appointment of producer members.

(a) For the initial Delegate Body, nominations for appointment as producer members shall be submitted to the Secretary pursuant to Subpart D.

(b) For each subsequent Delegate Body, nominations for appointment as producer members shall be submitted to the Secretary in the number requested by the Secretary by each State association either after an election conducted in accordance with § 1230.32 and by nominating the producers who receive the highest number of votes in such State; or pursuant to a selection process that is approved by the Secretary, is given public-notice at least one week in advance by publication in a newspaper or newspapers of general circulation in such State and in pork production and agriculture trade publications, and provides complete and equal access to every producer who has paid all assessments due under this subpart and who has not demanded any refund of an assessment paid pursuant to this subpart in the period since the selection of the previous Delegate Body;

(c) The Secretary shall appoint the producer members of each Delegate

Body from the nominations submitted in accordance with this section, except that if a State association does not submit nominations in the required manner or number, or if a State has no State association, the Secretary shall select producer members from that State after consultation with representatives of the pork industry in that State.

§ 1230.32 Conduct of election.

If a State association selects nominees for appointment to the Delegate Body through an election, it shall be conducted in the following manner:

(a) Elections shall be administered by the Board and the Board shall determine the timing of any elections.

(b) Producers who are residents of that State may be named as candidates for election to be nominees for appointment to the Delegate Body:

(1) By a nominating committee of producers in that State appointed by the Board; or

(2) The number of pork producers in a State shall be determined by the Department based on the latest available Department information, which tabulates by State the number of farming operations with porcine animals.

(c) To be eligible to vote in an election to nominate producer members from a State, a person must:

(1) Be a producer who is a resident of that State;

(2) Have paid all assessments due pursuant to this subpart; and

(3) Not have demanded any refund of an assessment paid pursuant to this subpart in the period since the selection of the previous Delegate Body.

(d) The Board shall cause notices of any election to be published at least one week prior to the election in a newspaper or newspapers of general circulation in that State, and in pork production and agricultural trade publications. The notices shall set forth the period of time and places for voting and such other information as the Board considers necessary.

(e) The identity of any person who voted and the manner in which any person voted shall be kept confidential.

[51 FR 31903, Sept. 5, 1986, as amended at 53 FR 30245, Aug. 11, 1988]

§ 1230.33 Appointment of importer members.

The Secretary shall appoint the importer members of each Delegate Body after consultation with importers.

§ 1230.34 Term of office.

(a) The members of the Delegate Body shall serve for terms of one year, except that the members of the initial Delegate Body shall serve only until the completion of the nomination and appointment process of the succeeding Delegate Body.

(b) Each member of the Delegate Body shall serve until that member's term expires, or a successor is appointed, whichever occurs later.

§ 1230.35 Vacancies.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Delegate Body, the Secretary shall appoint a successor for the unexpired term of such member from nominations made either by the appropriate State association or by importers, depending upon whether the vacancy is a producer or importer vacancy.

§ 1230.36 Procedure.

(a) A majority of the members shall constitute a quorum at a properly convened meeting of the Delegate Body, but only if that majority is also entitled to cast a majority of the shares (including fractions thereof). Any action of the Delegate Body, including any motion or nomination presented to it for a vote, shall require a majority vote, that is, the concurring votes of a majority of the shares cast on that action. The Delegate Body shall give timely notice of its meetings. The Delegate Body shall give the Secretary the same notice of its meetings as it gives to its members in order that the Secretary or a representative of the Secretary may attend meetings.

(b) The number of votes that may be cast by a producer member if present at a meeting shall be equal to the number of shares attributable to the State of such member divided by the number of producer members from such State. The number of votes that may be cast by an importer member if present at a meeting shall be equal to the number of shares allocated to importers divided by the number of importer members.

§ 1230.37 Officers.

The Delegate Body shall elect its Chairperson by a majority vote at the first annual meeting, but at each annual meeting after the first, the President of the Board shall serve as the Delegate Body's Chairperson.

§ 1230.38 Compensation and reimbursement.

The members of the Delegate Body shall serve without compensation but may be reimbursed by the Board for actual transportation expenses incurred by them in exercising their powers and duties under this subpart. Such expenses shall be paid from funds received by the Board pursuant to § 1230.72.

§ 1230.39 Powers and duties of the Delegate Body.

The Delegate Body shall have the following powers and duties:

(a) To meet annually;

(b) To recommend the rate of assessment prescribed by the initial order and any increase in such rate;

(c) To determine the percentage of the net assessments attributable to porcine animals produced in a State that each State association shall receive; and

(d) To nominate not less than 23 persons, including producers from a minimum of 12 States or importers, for appointment to the initial Board and not less than one and one-half persons (rounded up to the nearest person) for each vacancy on the Board that requires nominations thereafter. Each nomination shall be by a majority vote of the Delegate Body voting in person in accordance with § 1230.36.

NATIONAL PORK BOARD

§ 1230.50 Establishment and membership.

There is hereby established a National Pork Board of 15 members consisting of producers representing at least 12 States or importers appointed by the Secretary from nominations submitted pursuant to § 1230.39(d). The Board shall be deemed to be constituted once the Secretary makes the appointments to the Board.

§ 1230.51 Term of office.

(a) The members of the Board shall serve for terms of three years, except that the members appointed to the initial Board shall be designated for, and shall serve terms as follows: One-third of such members shall serve for one year terms; One-third shall serve for two year terms; and the remaining One-third shall serve for three year terms.

(b) Each member of the Board shall serve until the member's term expires, or until a successor is appointed, unless the member is removed pursuant to § 1230.55(b).

(c) No member shall serve more than two consecutive terms provided that those members serving an initial term of one year are eligible to serve two additional consecutive terms, but in no event, more than seven years in total.

(d) The first year of the terms of the initial Board shall begin immediately on appointment by the Secretary and continue until July 1, 1988. In subsequent years, the term of office shall begin on July 1.

§ 1230.52 Nominations.

Nominations for members of the Board shall be made by the Delegate Body in accordance with § 1230.39(d).

§ 1230.53 Nominee's agreement to serve.

Any person nominated to serve on the Board shall file with the Secretary at the time of the nomination a written agreement to:

(a) Serve on the Board if appointed;

(b) Disclose any relationship with the Council or a State association or any organization that has a contract with the Board and thereafter disclose, at any time while serving on the Board, any relationship with any organization that applies to the Board for a contract; and

(c) Withdraw from participation in deliberations, decisionmaking, or voting on matters concerning any entity referred to in paragraph (b) of this section, if an officer or member of the executive committee of such entity.

§ 1230.54 Appointment.

From the nominations submitted pursuant to § 1230.39(d), the Secretary shall appoint 15 producers or importers as members of the Board, but in no event shall the Secretary appoint producer members representing fewer than 12 States.

§ 1230.55 Vacancies.

(a) To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Board, the Secretary shall appoint a successor for the unexpired term of such member from the most recent list of nominations made by the Delegate Body.

(b) If a member of the Board fails or refuses to perform the duties of a member of the Board, or if a member of the Board engages in acts of dishonesty or willful misconduct, the Board may recommend to the Secretary that that member be removed from office. If the Secretary finds that the recommendation of the Board demonstrates adequate cause, the Secretary shall remove such member from office. A person appointed under this part or any employee of the Board may be removed by the Secretary if the Secretary determines that the person's continued service would be detrimental to the purposes of the Act.

§ 1230.56 Procedure.

(a) A majority of the members shall constitute a quorum at a properly convened meeting of the Board. Any action of the Board shall require the concurring votes of at least a majority of those present and voting. The Board shall give timely notice of its meetings. The Board shall give the Secretary the same notice of its meetings, including the meetings of its committees, as it gives to its members in order that the Secretary, or a representative of the Secretary, may attend the meetings.

(b) The Board may take action upon the concurring votes of a majority of its members by mail, telephone, telegraph or by other means of communication when, in the opinion of the President of the Board, such action must be taken before a meeting can be called. Action taken by this emergency procedure is valid only if all members are notified and provided the opportunity to vote and any telephone vote is confirmed promptly in writing and recorded in the Board minutes. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the Board.

§ 1230.57 Compensation and reimbursement.

The members of the Board shall serve without compensation but shall be reimbursed for reasonable expenses incurred by them in the exercise of their powers and the performance of their duties under this subpart. Such expenses shall be paid from funds received by the Board pursuant to § 1230.72.

§ 1230.58 Powers and duties of the Board.

The Board shall have the following powers and duties:

(a) To meet not less than annually, and to organize and elect from among its members, by majority vote, a President and such other officers as may be necessary;

(b) To receive and evaluate, or, on its own initiative, develop, and budget for proposals for plans and projects and to submit such plans and projects to the Secretary for approval;

(c) To administer directly or through contract the provisions of this subpart in accordance with its terms and provisions;

(d) To develop and submit to the Secretary for the Secretary's approval, plans and projects conducted either by the Board or others;

(e) To prepare and submit to the Secretary for the Secretary's approval, which is required for the following to be implemented:

(1) Budgets on a fiscal period basis of its anticipated expenses and disbursements in the administration of this subpart, including the projected cost of plans and projects to be conducted by the Board directly or by way of contract or agreement; and

(2) The budget, plans, or projects for which State associations are to receive funds under § 1230.72, including a general description of the proposed plan and project contemplated therein;

(f) With the approval of the Secretary, to enter into contracts or agreements with any person for the development and conduct of activities authorized under this subpart and for the payment of the cost thereof with funds collected through assessments pursuant to § 1230.71. Any such contract or agreement shall provide that:

(1) The contracting party shall develop and submit to the Board a plan or project together with a budget or budgets which shall show the estimated cost to be incurred for such plan or project;

(2) Any such plan or project shall become effective upon approval of the Secretary; and

(3) The contracting party shall keep accurate records of all of its relevant transactions and make periodic reports to the Board of relevant activities conducted and an accounting for funds received and expended, and such other reports as the Secretary or the Board may require. The Secretary or employees of the Board may audit periodically the records of the contracting party;

(g) To appoint or employ staff persons as it may deem necessary, to define the duties and determine the compensation of each, to protect the handling of Board funds through fidelity bonds, and to conduct routine business.

(h) To disseminate information to or communicate with producers or State associations through programs or by direct contact utilizing the public postage system or other systems;

(i) To select committees and subcommittees of Board members and to adopt such rules and by laws for the conduct of its business as it may deem advisable;

(j) To utilize advisory committees of persons other than Board members to assist in the development of plans or projects and pay the reasonable expenses and fees of the members of such committees;

(k) To prescribe rules and regulations necessary to effectuate the terms and provisions of this subpart;

(l) To recommend to the Secretary amendments to this subpart;

(m) With the approval of the Secretary, to invest, pending disbursement pursuant to a plan or project, funds collected through assessments authorized under § 1230.71 in, and only in, an obligation of the United States, a general obligation of any State or any political subdivision thereof, an interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or an obligation fully guaranteed as to principal and interest by the United States.

(n) To maintain such books and records, which shall be available to the Secretary for inspection and audit, and prepare and submit such reports as the Secretary may prescribe from time to time, and to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it;

(o) To prepare and make public and available to producers and importers at least annually, a report of its activities carried out and an accounting of funds received and expended;

(p) To have an audit of its financial statements conducted by a certified public accountant in accordance with generally accepted auditing standards at the end of each fiscal period and at such other times as the Secretary may request, and to submit a copy of each such audit report to the Secretary;

(q) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this subpart;

(r) To submit to the Secretary such information pursuant to this subpart as the Secretary may request; and

(s) To carry out an effective and coordinated program of promotion, research, and consumer information designed to strengthen the position of the pork industry in the marketplace and maintain, develop, and expand markets for pork and pork products.

[51 FR 31903, Sept. 5, 1986, as amended at 53 FR 30245, Aug. 11, 1988]

PROMOTION, RESEARCH, AND CONSUMER INFORMATION

§ 1230.60 Promotion, research, and consumer information.

(a) The Board shall receive and evaluate, or, on its own initiative, develop, and submit to the Secretary for approval, any plans and projects. Such plans and projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate plans and projects for promotion, research, and consumer information with respect to pork and pork products designed to strengthen the position of the pork industry in the marketplace and to maintain, develop, and expand domestic and foreign markets for pork and pork products;

(2) The establishment and conduct of research and studies with respect to the sale, distribution, marketing, and utilization of pork and pork products and the creation of new products thereof, to the end that marketing and utilization of pork and pork products may be encouraged, expanded, improved, or made more acceptable.

(b) Each plan and project shall be periodically reviewed or evaluated by the Board to ensure that the plan and project contributes to an effective and coordinated program of promotion, research, and consumer information. If it is found by the Board that any such plan and project does not further the purposes of the Act, the Board shall terminate such plan and project.

(c) No plan or project shall make a false or misleading claim on behalf of pork or a pork product or a false or misleading statement with respect to an attribute or use of a competing product.

(d) No plan or project shall undertake to advertise or promote pork or pork products by private brand or trade name unless such advertisement or promotion is specifically approved by the Board, with the concurrence of the Secretary.

EXPENSES AND ASSESSMENTS

§ 1230.70 Expenses.

(a) The Board is authorized to incur such expenses (including provision for a reasonable reserve that would permit an effective promotion, research, and consumer information program to continue in years when the amount of assessments may be reduced) as the Secretary finds are reasonable and likely to be incurred by the Board for its administration, maintenance, and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart, including financing plans and projects. Such expenses shall be paid from assessments collected pursuant to § 1230.71 and other funds available to the Board, including donations.

(b) The Board shall reimburse the Secretary, from assessments collected pursuant to § 1230.71, for reasonable administrative expenses incurred by the Department with respect to this subpart after January 1, 1986, including any expenses reasonably incurred for the conduct of elections of nominees for appointment to the initial Delegate Body and for the conduct of referenda.

§ 1230.71 Assessments.

(a)(1) Each producer producing in the United States a porcine animal raised as a feeder pig that is sold shall pay an assessment on that animal, unless such producer demonstrates to the Board by appropriate documentation that an assessment was previously paid on that animal as a feeder pig.

(2) Each producer producing in the United States a porcine animal raised for slaughter that is sold shall pay an assessment on that animal, unless such producer demonstrates to the Board by appropriate documentation that an assessment was previously paid on that animal as a market hog.

(3) Each producer producing in the United States a porcine animal raised for slaughter that such producer slaughters for sale shall pay an assessment on that animal unless such producer demonstrates to the Board by appropriate documentation that an assessment was previously paid on that animal as a market hog.

(4) Each producer producing in the United States a porcine animal raised for breeding stock that is sold shall pay an assessment on that animal,

nless such producer demonstrates to he Board by appropriate documentaion that an assessment was previously aid by a person on that animal as reeding stock.

(5) Each importer importing a porine animal, pork, or pork product into he United States shall pay an assessnent on that porcine animal, pork, or ork product, unless such importer emonstrates to the Board by approriate documentation that an assessnent was previously paid for that porine animal, pork, or pork product.

(b)(1) Each purchaser of a porcine nimal raised by a producer as a eeder pig or market hog shall collect n assessment on such porcine animal f an assessment is due pursuant to aragraph (a) of this section, and shall emit that assessment to the Board. or the purposes of collection and renittance of assessments, any person ngaged as a commission merchant, uction market, or livestock market in he business of receiving such porcine nimals for sale on commission for or n behalf of a producer shall be eemed to be a purchaser.

(2) Assessments on porcine animals aised as breeding stock which are sold y a commission merchant, auction, narket, or livestock market in the usiness of receiving such porcine aninals for sale on commission for or on ehalf of a producer shall be collected nd remitted by the commission merhant, auction market, or livestock narket selling such porcine animals.

(3) Each producer of porcine animals laughtered for sale by the producer r sold directly to a consumer in conection with a custom slaughter opertion shall remit an assessment to the oard if an assessment is due pursunt to paragraph (a) of this section.

(4) Assessments on domestic porcine nimals shall be remitted in the form f a negotiable instrument made payble to the "National Pork Board," hich, together with the reports reuired by § 1230.80, shall be sent to he address designated by the Board n accordance with the following renittance schedule:

(i) Monthly assessments totaling $25 r more shall be remitted to the Board y the 10th day of the month following the month in which the porcine animals were marketed.

(ii) Assessments totaling less than $25 during each month of a quarter in which the porcine animals were marketed may be accumulated and remitted by the 10th day of the month following the end of a quarter. The quarters shall be: January through March; April through June; July through September; October through December.

(iii) Assessments totaling $25 or more during any month of a quarter must be remitted in accordance with paragraph (b)(3)(i) of this section, together with any unremitted assessments from the previous month(s) of the quarter, if applicable.

(iv) Assessments collected during any calendar quarter and not previously remitted as described in paragraphs (b)(3) (i), (ii), or (iii) of this section, must be remitted by the 10th day of the month following the end of the quarter regardless of the amount.

(5) Each importer of a porcine animal, pork, or pork product shall remit an assessment to the Customs Service at the time such porcine animal, pork, or pork product is imported or in such manner as may be established by regulations prescribed by the Board and approved by the Secretary, if an assessment is due pursuant to paragraph (a) of this section.

(c) The initial rate of assessment shall be 0.25 percent of market value.

(d) The rate of assessment may, upon the recommendation of the Delegate Body, be increased by regulations prescribed by the Board and approved by the Secretary by no more than 0.1 percent of such market value per fiscal period to a total of not more than 0.5 percent of market value.

(e) Assessments on imported pork and pork products shall be expressed in an amount per pound for each type of pork or pork product subject to assessment, which shall be established by regulations prescribed by the Board and approved by the Secretary.

[51 FR 31903, Sept. 5, 1986; 51 FR 36383, Oct. 10, 1986; 53 FR 1910, Jan. 25, 1988; 53 FR 30245, Aug. 11, 1988]

§ 1230.72 Distribution of assessments.

Assessments remitted to the Board shall be distributed as follows:

(a) Each State association shall receive on a monthly basis, a percentage determined by the Delegate Body or 16.5 percent, whichever is higher, of the net assessments attributable to that State. The net assessments attributable to a State is the total amount of assessments received from producers in a State less the amount of refunds paid to producers in that State.

(b) A State association which was conducting a pork promotion program in the period from July 1, 1984 to June 30, 1985, shall receive additional amounts at such times as the Board may determine, so that the total amount received on an annual basis would be equal to the amount that would have been collected in such State pursuant to the pork promotion program in existence in such State from July 1, 1984, to June 30, 1985, had the porcine animals subject to assessment and to which no refund was received, been produced from July 1, 1984, to June 30, 1985, and been subject to the rates of assessment then in effect from such State to the Council and other national entities involved in pork promotion, research, and consumer information. This paragraph shall apply to a State association only if the annual amount determined under this paragraph would be greater than the annual amount determined under paragraph (a) of this section.

(c) The Council shall receive on a monthly basis 35 percent of the net assessments until after the referendum is conducted, and 25 percent thereafter and until 12 months after the referendum.

§ 1230.73 Uses of distributed assessments.

(a) Each State association shall use its distribution of assessments pursuant to § 1230.72, as well as any proceeds from the investment of such funds pending their use, for financing plans and projects and the administrative expenses incurred in connection therewith, including the cost of administering nominations and elections of producer members of the Delegate Body.

(b) The Council shall use its distribution of assessments pursuant to § 1230.72, as well as any proceeds from the investment of such funds pending their use, for financing plans and projects and the Council's administrative expenses.

(c) The Board shall use its distribution of assessments pursuant to § 1230.72, as well as any proceeds from the investment of such funds pending their use, for:

(1) Financing plans and projects;

(2) The Board's expenses for the Board's administration, maintenance, and functioning as authorized by the Secretary;

(3) Accumulation of a reserve not to exceed one fiscal period's budget to permit continuation of an effective promotion, research, and consumer information program in years when assessment amounts may be reduced; and

(4) The Secretary's administrative costs in carrying out this part.

§ 1230.74 Prohibited use of distributed assessments.

(a) No funds collected under this subpart shall in any manner be used for the purpose of influencing legislation as that term is defined in section 4911 (d) and (e)(2) of the Internal Revenue Code of 1954, or for the purpose of influencing governmental policy or action except in recommending to the Secretary amendments to this part.

(b) Except as provided for in paragraph (c) of this section, organizations receiving distributions of assessments from the Board shall furnish the Board with an annual financial statement audited by a certified public accountant of all funds distributed to such organization pursuant to this subpart and any other reports as may be required by the Secretary or the Board in order to verify the use of such funds.

(c) State pork producer associations as defined in § 1230.25 receiving distributions of assessments pursuant to § 1230.72 which receive less than $10,000 in assessments annually may satisfy the requirements of paragraph (b) of the section above by providing unaudited annual financial statements to the Board prepared by State association staff members or individuals who prepare annual financial statements for the State association provided that such financial statements are attested to and certified by two members of the State associations. Notwithstanding any provisions herein to the contrary, State associations receiving less than $10,000 in distributed assessments annually, which submit unaudited annual financial statements to the Board, shall be required to submit an annual financial statement audited by a certified public accountant at lease once every 5 years or more frequently if deemed necessary by the Board or the Secretary. If State pork producer associations receive less than $2,000 in distributed assessments annually, the Board may elect to conduct its own audit of those State associations annual financial statements every 5 years in lieu of the required financial statements.

[51 FR 31903, Sept. 5, 1986, as amended at 53 FR 30245, Aug. 11, 1988]

§ 1230.75 Adjustment of accounts.

Whenever the Board or the Department determines, through an audit of a person's reports, records, books or accounts or through some other means that additional money is due the Board or that money is due such person from the Board, such person shall be notified of the amount due. Any amount due the Board shall be remitted to the Board by the next date for remitting assessments as provided in § 1230.71(b)(3). Any overpayment to the Board shall be credited to the account of the person remitting the overpayment and shall be applied against amounts due in succeeding months except that the Board shall make prompt payment when an overpayment cannot be adjusted by a credit.

§ 1230.76 Charges.

Any assessment not paid when due shall be increased 1.5 percent each month beginning with the day following the date such assessment was due. Any remaining amount due, which shall include any unpaid charges previously made pursuant to this section, shall be increased at the same rate on the corresponding day of each month thereafter until paid. For the purpose of this section, any assessment that was determined at a date later than prescribed by this subpart because of a person's failure to submit a report to the Board when due shall be considered to have been payable by the date it would have been due if the report had been filed when due. The timeliness of a payment to the Board shall be based on the applicable postmark date or the date actually received by the Board, whichever is earlier.

§ 1230.77 Refunds.

(a) Any producer or importer who is responsible for and pays an assessment under the authority of this subpart and does not support the pork promotion, research, and consumer information program established by this subpart shall have the right, prior to the approval of the continuation of this subpart pursuant to the referendum, to demand and receive from the Board a refund of such an assessment upon submission of proof satisfactory to the Board, that the producer or importer paid the assessment for which refund is sought and did not collect such assessment from another person.

(b) The producer or importer's demand shall be signed, if the producer or importer is an individual, by that producer or importer and, if other than an individual, by a person who is duly authorized, be mailed within a time period prescribed by the Board and approved by the Secretary, but not later than 30 days after the end of the month in which the assessment was paid, on a Board-approved refund application form.

(c) Refunds properly demanded in accordance with paragraphs (a) and (b) of this section shall be made by the Board to the producer or importer not later than 30 days after demand is received by the Board.

(d) The name of any producer or importer demanding a refund shall be kept confidential by all persons, except that the Board may utilize such information in determining who is entitled to vote in elections for Dele-

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gate Body that are administered by the Board.

REPORTS, BOOKS, AND RECORDS

§ 1230.80 Reports.

Each person responsible for collecting or remitting any assessment under § 1230.71(b) shall report at the time for remitting assessments to the Board the following information:

(a) The quantity and market value of the porcine animals subject to assessment;

(b) The amount of assessment collected;

(c) The month the assessment was collected;

(d) The State where the porcine animals were produced; and

(e) Such other information as may be required by regulations prescribed by the Board and approved by the Secretary.

§ 1230.81 Books and records.

Each person who is subject to this subpart shall maintain and, during normal business hours, make available for inspection by employees of the Board and the Secretary such books and records as are necessary to carry out the provision of this subpart, including such records as are necessary to verify any required reports. Such records shall be retained for at least two years beyond the fiscal period of their applicability.

§ 1230.82 Confidential treatment.

All information obtained from the books, records or reports required to be maintained under §§ 1230.80 and 1230.81 of this subpart shall be kept confidential by all persons, including employees and agents and former employees and agents of the Board, all officers and employees and all former officers and employees of the Department, and by all officers and all employees and all former officers and employees of contracting parties having access to such information, and shall not be available to Board members. Only those persons having a specific need for such information in order to effectively implement, administer, or enforce the provisions of this subpart shall have access to such information. In addition, only such information so furnished or acquired shall be disclosed as the Secretary deems relevant and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of a number of persons subject to this subpart or of statistical data collected therefrom, which statements or data do not identify the information furnished by any person; or

(b) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this subpart, together with a statement of the particular provisions of this subpart violated by such person.

MISCELLANEOUS

§ 1230.85 Proceedings after termination.

(a) Upon the termination of this subpart, the Board shall recommend not more than five of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all the funds and property owned, in the possession of, or under the control of, the Board, including unpaid claims or property not delivered or any other claim existing at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contract or agreement;

(3) From time to time account for all receipts and disbursements and deliver all property on hand together with all books and records of the Board and of the trustees, to such persons as the Secretary may direct; and

(4) Upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such persons full title and right to all of the funds, property,

and claims vested in the Board or the trustees pursuant to this subpart.

(c) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be used, to the extent practicable, in the interest of continuing one or more of the plans and projects authorized pursuant to this subpart.

§ 1230.86 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant hereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may hereafter arise in connection with any provision of this subpart or any regulation issued thereunder;

(b) Release or extinguish any violation of this subpart or any regulation issued thereunder; or

(c) Affect or impair any rights or remedies of the United States, the Secretary, or any person with respect to any such violation.

§ 1230.87 Personal liability.

No member or employee of the Board shall be held personally liable, either individually or jointly, in any way whatsoever to any person for errors in judgment, mistakes, or other acts of either commission or omission, as such member or employee, except for acts of dishonesty or willful misconduct.

§ 1230.88 Patents, copyrights, inventions, and publications.

Any patents, copyrights, trademarks, inventions, or publications developed through the use of funds collected under the provisions of this subpart shall be the property of the United States Government as represented by the Board, and shall, along with any rents, royalties, residual payments, or other income from the rental, sale, leasing, franchising, or other uses of such patents, copyrights, inventions, or publications inure to the benefit of the Board as income and be subject to the same fiscal, budget, and audit controls as other funds of the Board. Upon termination of this subpart, § 1230.85 shall apply to determine disposition of all such property.

§ 1230.89 Amendments.

The Secretary may from time to time amend provisions of this part. Any interested person or organization affected by the provisions of the Act may propose amendments to the Secretary.

§ 1230.90 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1230.91 Paperwork Reduction Act assigned number.

The information collection and recordkeeping requirements contained in this subpart have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter and have been assigned OMB Control Number 0851-0151.

Subpart B—Rules and Regulations

SOURCE: 53 FR 1911, Jan. 25, 1988, unless otherwise noted.

DEFINITIONS

§ 1230.100 Terms defined.

As used throughout this subpart, unless the context otherwise requires, terms shall have the same meaning as the definition of such terms in Subpart A of this part.

ASSESSMENTS

§ 1230.110 Assessments on imported live porcine animals, pork, and pork products.

The following HTS categories of imported live porcine animals are subject to assessment at the rate specified.

Live Porcine animals	Assessment
0103.10.00004	0.25 percent cutoms entered value
0103.91.00006	0.25 percent cutoms entered value
0103.92.00005	0.25 percent cutoms entered value

The following HTS categories of pork and pork products are subject to assessment at the rate specified.

Pork and pork products	Assessment	
	cents/lb	cents/kg
0203.11.00002	16	352736
0203.12.10107	16	352736
0203.12.10205	16	352736
0203.12.90100	16	352736
0203.12.90208	16	352736
0203.19.20108	18	396828
0203.19.20901	18	396828
0203.19.40104	16	352736
0203.19.40907	16	352736
0203.21.00000	16	352736
0203.22.10007	16	352736
0203.22.90000	16	352736
0203.29.20008	18	396828
0203.29.40004	16	352736
0206.30.00006	16	352736
0206.41.00003	16	352736
0206.49.00005	16	352736
0210.11.00101	16	352736
0210.11.00209	16	352736
0210.12.00208	16	352736
0210.12.00404	16	352736
0210.19.00103	18	396828
0210.19.00906	18	396828
1601.00.20105	22	485012
1601.00.20908	22	485012
1602.41.20203	24	529104
1602.41.20409	24	529104
1602.41.90002	16	352736
1602.42.20202	24	529104
1602.42.20408	24	529104
1602.42.40002	16	352736
1602.49.20009	22	485012
1602.49.40005	18	396828

[55 FR 29341, July 19, 1990]

MISCELLANEOUS

§ 1230.120 OMB control number assigned pursuant to the Paperwork Reduction Act.

The information collection and recordkeeping requirements contained in this part have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control number 0851-0151.

Subpart C—Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From the Pork Promotion, Reaearch, and Consumer Information Order

SOURCE: 51 FR 31910, Sept. 5, 1986, unless otherwise noted. Redesignated at 53 FR 1910, Jan. 25, 1988.

§ 1230.400 Words in singular form.

Words in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 1230.401 Definitions.

As used in this subpart, the terms as defined in Subpart A of this part shall apply with equal force and effect. In addition, under the context otherwise requires:

(a) The terms "Administrative Law Judge" or "judge" mean any administrative law judge appointed pursuant to 5 U.S.C. 3105, and assigned to the proceeding involved;

(b) The term "Administrator" means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead;

(c) The term "FEDERAL REGISTER" means the publication provided for by the Federal Register Act (44 U.S.C. 1501-1511), and acts supplementary thereto and amendatory thereof;

(d) The term "order" means Subpart A of this part and any regulation which may be issued pursuant thereto or to the Act;

(e) The term "proceeding" means a proceeding before the Secretary arising under section 1625 of the Act (7 U.S.C. 4815);

(f) The term "hearing" means that part of the proceeding which involves the submission of evidence;

(g) The term "party" includes the Department;

(h) The term "hearing clerk" means the Hearing Clerk, United States Department of Agriculture, Washington, DC 20250;

(i) The term "decision" means the judge's initial decision in any proceeding and includes the judge's (1) findings of fact and conclusions with respect to all material issues of fact, law, or discretion as well as the reasons or basis therefor; (2) order; and (3) rulings on findings, conclusions and proposed orders submitted by the parties; and

(j) The term "petition" includes an amended petition.

§ 1230.402 Institution of proceeding.

(a) *Filing and Service of Petition.* Any person subject to the order desiring to complain that the order or any provision of thereof or any obligation imposed in connection therewith is not in accordance with law, shall file with the Hearing Clerk five copies of a petition in writing addressed to the Secretary, requesting a modification of such order or to be exempted from such order. Promptly upon receipt of the petition, the Hearing Clerk shall transmit a true copy thereof to the Administrator and the General Counsel, respectively.

(b) *Contents of Petition.* A petition shall contain:

(1) The correct name, address, and principal place of business of the petitioner. If the petitioner is a corporation, such fact shall be stated, together with the name of the State of incorporation, the date of incorporation, and the names, addresses, and respective positions held by its officers; if an unincorporated association, the names and addresses of its officers, and the respective positions held by them; if a partnership, the name and address of each partner;

(2) Reference to the specific terms or provisions of the order, or the interpretation or application thereof, which are complained of;

(3) A full statement of the facts (avoiding a mere repetition of detailed evidence) upon which the petition is based, and which it is desired that the Secretary consider, setting forth clearly and concisely the nature of the petitioners' business and the manner in which petitioner claims to be affected by the terms or provisions of the order or the interpretation or application thereof, which complained of;

(4) A statement of the grounds on which the terms or provisions of the order or the interpretation or application thereof, which are complained of, are challenged as not in accordance with law; and

(5) Request for the specific relief which the petitioner desires the Secretary to grant.

(c) *Motion to Dismiss Petition-Filing, Contents, and Responses Thereto.* If the Administrator is of the opinion that the petition, or any portion thereof, does not substantially comply in form or content with the Act or with the requirements of paragraph (b) of this section, or is not filed in good faith or is filed for the purpose of delay, the Administrator may, within 30 days after the filing of the petition, file with the hearing clerk an application to dismiss the petition, or any portion thereof, on one or more of the grounds stated in this paragraph. Such motion shall specify the grounds of objection to the petition and if based, in whole or in part, on an allegation of fact not appearing on the face of the petition, shall be accompanied by appropriate affidavits or documentary evidence substantiating such allegations of fact. The motion may be accompanied by a memorandum of law. Upon receipt of such motion, the Hearing Clerk shall cause a copy thereof to be served upon the petitioner, together with a notice stating that all papers to be submitted in opposition of such application, including any memorandum of law, must be filed by the petitioner with the hearing clerk, not later than 20 days after the service of such notice upon the petitioner. Upon the expiration of the time specified in such notice or upon receipt of such papers from the petitioner, the Hearing Clerk shall transmit all papers which have been filed in connection with the motion to the Judge for consideration.

(d) *Further Proceeding.* Further proceedings on petitions to modify or to be exempted from any order shall be governed by §§ 900.52(c)(2) through 900.71 of this title (Rules of Practice Governing Proceeding on Petitions To Modify or To Be Exempted From Marketing Orders), except that each reference to "marketing order" in those sections shall mean "order."

Subpart D—Procedures for Nominations and Elections of Pork Producers and Nominations of Importers for Appointment to the Initial National Pork Producers Delegate Body

Source: 51 FR 11554, Apr. 4, 1986, unless otherwise noted. Redesignated at 51 FR 31903, Sept. 5, 1986.

§ 1230.501 General.

Associations, organizations, or individuals must be recognized by the Secretary as being eligible to participate in nominating pork producers as candidates for statewide elections of nominees for appointment to the initial Delegate Body. The number of nominees required for each allotted position will be determined by the Secretary. Additionally, the Secretary shall provide that organizations or associations which represent importers of porcine animals, pork, and pork products may nominate such importers for appointment as members of the Delegate Body. The making and receiving of nominations and the election process shall be conducted in accordance with this subpart.

§ 1230.502 Definitions.

As used in this subpart:

"Act" means the Pork Promotion, Research, and Consumer Information Act of 1985, Title XVI, Subtitle B, of Pub. L. 99-198, approved December 23, 1985.

"Delegate Body" means the National Pork Producers Delegate Body established by the Secretary.

"Department" means the United States Department of Agriculture.

"Importer" means a person who imports porcine animals, porks, or pork products into the United States.

"Livestock and Seed Division" means the Livestock and Seed Division of the Department's Agricultural Marketing Service.

"Person" means an individual, group of individuals, partnership, corporation, association, organization, cooperative, or other entity.

"Porcine animal" means a swine raised for slaughter, feeder pigs, or seed stock.

"Pork" means the flesh of a porcine animal.

"Pork product" means a product produced or processed in whole or in part from pork.

"Producer" means a person who produces porcine animals in the United States for sale in commerce.

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, to act in the Secretary's stead.

"State" means each of the 50 States.

"State association" means the single organization of pork producers in a State that is (1) organized under the laws of the State in which such association operates; and (2) recognized by the chief executive officer of such State as representing the pork producers of such State; or if such organization did not exist on January 1, 1986, an organization that represents not fewer than 50 pork producers who market annually, in the aggregate, not less than 10 percent of the volume (measured in pounds) of porcine animals marketed in such State.

§ 1230.503 Administration.

The Livestock and Seed Division shall have the responsibility for administering the provisions of this subpart.

§ 1230.504 Eligibility to nominate candidates for election and appointment to the initial Delegate Body.

(a) *States with existing State associations.* Existing State associations are eligible to submit names of candidates for election as producer nominees for appointment by the Secretary to the Delegate Body. However, such State associations must provide the Department with written verification that they comply with the definition of a State association in § 1230.502.

(b) *States without existing State associations.* In the absence of an existing State association referred to in paragraph (a) of this section, an organization which represents not fewer than 50 pork producers who market annually in the aggregate not less than 10 percent of the volume (measured in pounds) of porcine animals marketed in such State is eligible to submit candidates for election and appointment to the Delegate Body. Such organization must provide the Department with a written statement containing the number of pork producers in the State that it represents and the aggregate volume in pounds of porcine animals marketed annually by those producers in that State.

(c) *Qualified individuals.* Individual pork producers may be nominated as candidates from the State in which they reside for election and appointment to the Delegate Body. A nomination must be supported by a written petition signed by 100 producers or 5 percent of the pork producers in such State, whichever is less. Written petitions must be submitted to the Chief; Marketing Programs and Procurement Branch; Livestock and Seed Division; Agricultural Marketing Service, USDA; 14th and Independence Avenue, SW., Room 2610-S; Washington, DC 20250.

(d) *Associations and organizations representing importers.* The determination by the Secretary as to the eligibility of importer associations and organizations to nominate members to the Delegate Body shall be based on a factual written report submitted to the Department by importer organizations or associations. The report shall contain:

(1) The number of importer members by type of product (i.e., procine animals, pork, pork products).

(2) Annual imported volume in pounds of pork and pork products and/or the number of head of porcine animals.

(3) Evidence as to the stability and permanency of the organization (i.e., years in existence).

(4) The names of the countries of origin of such imported procine animals, pork, and pork products.

(5) Such other information as the Secretary may require.

(e) The information required in paragraphs (a), (b), (d), or the petition required in paragraph (c) of this section may be submitted to the Secretary either with completed nomination forms or at the time a request is made for official nomination forms. The Secretary may also consider additional relevant information. The Secretary's determination of eligibility to nominate shall be final.

(f) *Official Nomination Forms.* Official nomination forms, "Nomination of Pork Producers for Election and Appointment to the National Pork Producers Delegate Body," must be used to submit the names of producers nominated as candidates for statewide elections. A biographical data sheet for each nominee listed on the "Nomination of Pork Producers for Election and Appointment to the National Pork Producers Delegate Body" must be attached to that form. Official nomination forms, biographical data sheets, and additional information on nominations can be obtained by calling or writing the Chief; Marketing Programs and Procurement Branch; Livestock and Seed Division; Agricultural Marketing Service, U.S. Department of Agriculture; 14th and Independence Avenue, SW., Room 2610-S; Washington, DC 20250. (Telephone: 202/447-2650).

§ 1230.505 Nominations of members for appointment to the Delegate Body.

All nominations to the initial Delegate Body shall be made in the following manner:

(a) *Producer members.* The producer nominees from each State for appointment by the Secretary to the Delegate Body shall be determined by statewide elections as described in § 1230.508.

(b) *Importer members.* (1) Eligible importer associations or organizations shall submit to the Department the names of nominees for each of the allotted importer positions on the Delegate Body. Each nomination must be accompanied by biographical data which shall include the following information:

(i) Name, date and place of birth, U.S. citizenship, Social Security number, residence address and telephone number;

(ii) Business address, telephone number, and brief description of business including volume and types of products imported, and

(iii) A list of importer organizations of which the nominee is a member and current positions in such organization held by the nominee.

(2) Eligible importer associations or organizations will be given 45 days in which to submit nominations to the Marketing Programs and Procurement Branch; Livestock and Seed Division; Agricultural Marketing Service; 14th and Independence Avenue, SW., Room 2610-S; Washington, DC 20250.

(3) If there are two or more eligible importer associations or organizations, they may jointly nominate importers for each allotted position on the Delegate Body.

§ 1230.506 Initial Delegate Body membership.

(a) *Producers.* The number of producer members appointed to the initial Delegate Body shall be determined pursuant to the following criteria.

(1) Shares shall be assigned to each State for the 1986 calendar year on the basis of one share for each $400,000 of farm market value of porcine animals marketed from such State as determined by the Secretary based on the annual average of farm market value for the calendar year 1982 through 1984 rounded to the nearest $400,000.

(2) If the number of shares assigned to a State is:

(i) Less than 301, the State shall receive two producer members;

(ii) More than 300 but less than 601, the State shall receive three producer members;

(iii) More than 600 but less than 1,001, the State shall receive four producer members; and

(iv) More than 1,000, the State shall receive four producer members, plus one additional member for each 300 additional shares in excess of 1,000 shares, rounded to the nearest 300.

(3) Based on the criteria contained in paragraphs (a) (1) and (2) of this section, the number of members on the Delegate Body allotted to each State shall be: Alabama 2; Alaska 2; Arizona 2; Arkansas 2; California 2; Colorado 2; Connecticut 2; Delaware 2; Florida 2; Georgia 3; Hawaii 2; Idaho 2; Illinois 10; Indiana 7; Iowa 23; Kansas 4; Kentucky 3; Louisiana 2; Maine 2; Maryland 2; Massachusetts 2; Michigan 3; Minnesota 7; Mississippi 2; Missouri 6; Montana 2; Nebraska 6; Nevada 2; New Hampshire 2; New Jersey 2; New Mexico 2; New York 2; North Carolina 4; North Dakota 2; Ohio 4; Oklahoma 2; Oregon 2; Pennsylvania 2; Rhode Island 2; South Carolina 2; South Dakota 4; Tennessee 3; Texas 2; Utah 2; Vermont 2; Virginia 2; Washington 2; West Virginia 2; Wisconsin 4; and Wyoming 2.

(b) *Importers.* The number of importer members to be appointed to the initial Delegate Body shall be determined pursuant to the following criteria.

(1) Shares shall be assigned on the basis of one share for each $575,000 of market value of marketed porcine animals, pork, or pork products based on the annual average of imports for the calendar years 1982 through 1984 rounded to the nearest $575,000.

(2) The number of importer members appointed to the Delegate Body shall equal a total of:

(i) Three members for the first 1,000 such shares; and

(ii) One additional member for each 300 additional shares in excess of 1,000 shares rounded to the nearest 300.

(3) Based on the criteria contained in paragraphs (b) (1) and (2) of this section, importers shall be entitled to four members on the Delegate Body.

§ 1230.507 Nominations of producers as candidates for election.

(a) The candidates for election in each State shall be nominated by eligible State associations, organizations, and qualified individuals as described in § 1230.504. Nominees must be pork producers and reside in the State they will represent as candidates in the election. Official nomination forms, listing the names of the nominees and a completed and signed Biographical Data Sheet for each nominee shall be submitted to the Chief; Marketing Programs and Procurement Branch; Livestock and Seed Division; Agricultural Marketing Service, U.S. Department of Agriculture; 14th and Independence Avenue, SW., Room 2610-S; Washington, DC 20250. A 45-day time period will be provided for submitting nominations for candidates in the elections.

(b) In the case of a State that does not have an eligible State association, or if an eligible State association, other eligible organization, or an eligible qualified individual does not submit nominations, the Secretary shall obtain nominations in such States from one or more of the following:

(1) General farm organizations,

(2) State Departments of Agriculture, and

(3) Individuals considered by the Secretary to be knowledgeable about the pork industry in such States.

§ 1230.508 Election process.

(a) *General.* To appoint the initial Delegate Body, the Secretary shall call for statewide elections of producers nominated as candidates for appointment. To facilitate the timely implementation of the pork promotion, research, and consumer information program, the elections shall be conducted prior to the effective date of the final order. The decision to conduct an election in each State shall be based on the number of candidates nominated in each State.

(b) *Preparation and distribution of ballots.* A master ballot shall be prepared for each State containing the names of eligible candidates nominated by State associations, organizations, or interested individuals under § 1230.507. A master ballot will list the names of nominees from each State and the cities in which the nominees reside. The master ballot for each State will be reproduced and distributed to designated voting places within the State. Each ballot will contain instructions for its completion.

(c) *Notice.* The Secretary shall give public notice of the statewide elections by publication in one or more newspapers of general circulation in each State and in pork production and agricultural trade publications at least 1 week prior to the election and in any other reasonable manner determined by the Secretary. The notice shall set forth the dates, times, and places for voting and such other information as the Secretary considers necessary.

(d) *Time and place of voting.* Statewide elections will be held in a timely manner following the distribution of the ballots to the designated voting places in each State. Persons eligible to vote shall register to vote and complete their ballots simultaneously at the designated voting places in each State. Voting shall take place over a 1-week period, Monday through Friday, during the normal business hours of the designated voting places.

(e) *Voter eligibility requirements.* Any person who produces porcine animals in the United States for sale in commerce shall be eligible to vote in the election in the State in which such person resides.

(f) *Voting procedures*—(1) *Voting in person.* Each eligible voter shall register at the time of voting by signing a voter registration list which will signify that such voter is a pork producer as defined in § 1230.502 and a resident of that State. Upon registration, each eligible voter will receive a ballot containing the names and the resident cities of the pork producer candidates. Voting shall be by secret ballot under the supervision of the Secretary's designated representative. All ballots shall be placed in sealed ballot boxes or other suitable receptacles.

(2) *Absentee ballot.* Eligible voters, unable to vote in person, may obtain a ballot and a voter registration form by mail. To ensure confidentiality of the vote, the voter shall seal the completed ballot in a separate envelope and include it in another envelope containing the signed registration form. The ballot shall remain sealed until the counting of all such ballots. Absentee ballots may be obtained from and must be returned to the address designated by the Secretary, which will be provided in public announcements of the statewide elections.

(g) *Procedures for determining the elected candidates.* After the voting period ends, the ballots cast in each designated voting place including any absentee ballots shall be counted in a manner and by a person or persons designated by the Secretary. The results of the election in each State shall be forwarded to the Department. Those candidates in each State receiving the highest number of votes shall be submitted to the Secretary for consideration as appointees to the Delegate Body.

§ 1230.509 Acceptance of appointment.

Producers and importers nominated to the Delegate Body must signify in writing their intent to serve if appointed.

§ 1230.510 Verification of information.

The Secretary may require verification of any information submitted and may procure such other information as may be required to determine whether an association, organization, or individual is eligible to nominate or be nominated for appointment to the initial Delegated Body under the Act.

§ 1230.511 Confidential treatment of information.

All documents submitted by associations, organizations, and individuals and information otherwise obtained by the Department pursuant to this subpart shall be kept confidential by all employees of the Department. Only such information so furnished or acquired as the Secretary deems relevant shall be disclosed and then only in the issuance of general statements based upon the reports of a number of persons subject to the order or statistical data collected therefrom, when such a statement or data does not identify the information furnished by any one person.

§ 1230.512 Paperwork Reduction Act assigned number.

The OMB has approved the information collection request contained in this subpart under the provisions of 44 U.S.C. Chapter 35, and OMB Control Number 0581-0151 has been assigned.

Subpart E—Procedure for the Conduct of Referendum

SOURCE: 53 FR 28184, July 27, 1988, unless otherwise noted.

DEFINITIONS

§ 1230.601 Act.

"Act" means the Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801-4819) and any amendments thereto.

§ 1230.602 Administrator.

"Administrator" means the Administrator of the Agricultural Marketing Service, or any officer or employee of the Department to whom there has heretofore been delegated or may hereafter be delegated, the authority to act in the Administrator's stead.

§ 1230.603 Agricultural Stabilization and Conservation County Committee.

"Agricultural Stabilization and Conservation County Committee," also referred to as "ASC county commmittee" means the group of persons within a county elected to act as the county Agricultural Stabilization and Conservation Committee.

§ 1230.604 Agricultural Stabilization and Conservation Service.

"Agricultural Stabilization and Conservation Service," also referred to as "ASCS" means the Agricultural Stabilization and Conservation Service of the Department.

§ 1230.605 Agricultural Stabilization and Conservation Service County Executive Director.

"Agricultural Stabilization and Conservation Service County Executive Director," also referred to as "ASCS County Executive Director" means the person employed by the ASC county committee to execute the policies of the ASC county committee and be responsible for the day-to-day operation of the ASCS county office, or the person acting in such capacity.

§ 1230.606 Department.

"Department" means the United States Department of Agriculture.

§ 1230.607 Deputy Administrator.

"Deputy Administrator" means the Deputy or Acting Deputy Administrator, State and County Operations, Agriculture Stabilization and Conservation Service, U.S. Department of Agriculture.

§ 1230.608 Extension Service.

"Extension Service" also referred to as 'ES" means the Extension Service of the Department.

§ 1230.609 Extension Service Agent.

"Extension Service Agent" also referred to as "ES Agent" means an employee of the Extension Service of the Department.

§ 1230.610 Imported pork and pork products.

"Imported Pork and Pork Products" means products which are imported into the United States which the Secretary determines contain a substantial amount of pork, including those products which have been assigned one or more of the tariff or customs numbers identified in regulations issued pursuant to the Order.

§ 1230.611 Importer.

"Importer" means a person who imports porcine animals, pork, or pork products into the United States.

§ 1230.612 Order.

"Order" means the Pork Promotion, Research, and Consumer Information Order.

§ 1230.613 Person.

"Person" means any individual, group of individuals, partnership, corporation, association, cooperative, or other entity.

§ 1230.614 Porcine animal.

"Porcine Animal" means a swine, that is raised—

(a) As a feeder pig, that is, a young pig sold to another person to be finished over a period of more than 1 month for slaughtering;

(b) For breeding purposes as seed stock and included in the breeding herd; and

(c) As a market hog, slaughtered by the producer or sold to be slaughtered, usually within 1 month of such transfer.

§ 1230.615 Pork.

"Pork" means the flesh of a porcine animal.

§ 1230.616 Pork product.

"Pork Product" means an edible product produced or processed in whole or in part from pork.

§ 1230.617 Producer.

"Producer" means a person who produces porcine animals in the United States for sale in commerce and who is subject to assessment.

§ 1230.618 Referendum.

"Referendum" means the referendum to be conducted by the Secretary pursuant to the Act during a period beginning not earlier than 24 months after issuance of the Order and ending not later than 30 months after the issuance of the Order whereby persons who have been producers and importers during a representative period shall be given the opportunity to vote to determine whether the continuance of the Order is favored by a majority of producers and importers voting.

§ 1230.619 Registration period.

"Registration period" means the 2-day period of September 7 and 8, 1988, for registration of producers and importers desiring to vote in a referendum. The registration period shall be the same days as the voting period.

§ 1230.620 Representative period.

"Representative period" means the period November 1, 1986, to September 6, 1988, which is established pursuant to section 1622(a) of the Act.

§ 1230.621 Secretary.

"Secretary" means the Secretary of Agriculture of the United States or any other officer or employee of the Department to whom authority has been delegated, or may hereafter be delegated, to act in the Secretary's stead.

§ 1230.622 State.

"State" means each of the 50 States.

§ 1230.623 United States.

"United States" means the 50 States and the District of Columbia.

§ 1230.624 Voting period.

"Voting period" means the 2-day period of September 7 and 8, 1988, for voting in a referendum.

REFERENDUM

§ 1230.625 General.

(a) A referendum to determine whether eligible producers and importers favor the continuance of the Order shall be conducted in accordance with this subpart.

(b) The Order shall continue only if the Secretary determines that the Order is approved or favored by a majority of the producers and importers casting valid ballots in a referendum.

(c) The referendum shall be conducted at the county offices of the Extension Service of the Department.

(d) The Agricultural Stabilization and Conservation Service of the Department shall assist in the conduct of the referendum.

§ 1230.626 Supervision of referendum.

The Administrator (AMS) shall be responsible for conducting the referendum in accordance with this subpart.

§ 1230.627 Eligibility.

(a) *Eligible producers.* Each person who was a producer during the representative period is entitled to register and vote in the referendum. Each producer shall be entitled to cast only one ballot in the referendum.

(b) *Eligible importers.* Each person who was an importer during the representative period is entitled to register and vote in the referendum. Each importer shall be entitled to cast only one ballot in the referendum.

(c) *Proxy registration and voting.* Proxy registration and voting is not authorized except that an officer or employee of a corporate producer or corporate importer, or any guardian, administrator, executor, or trustee of a producer's or importer's estate, or an authorized representative of any eligible entity (other than an individual producer or importer) such as a corporation or partnership, may register and cast a ballot on behalf of such entity. Any individual registering to vote in the referendum on behalf of any producer or importer corporation, partnership, or other eligible entity shall certify that he or she is authorized by such entity to take such action.

(d) *Joint and group interest.* A group of individuals, such as members of a family, joint tenants, tenants in common, a partnership, owners of community property, or a corporation, engaged in the production of porcine animals as a producer or in the importation of porcine animals, pork or pork products into the U.S. as an importer shall be entitled to only one vote; provided, however, that any member of a group may register to vote as a producer or importer if he or she is an eligible producer or importer separate from the group.

§ 1230.628 Time and place of registration and voting.

The referendum shall be held for 2 days beginning on September 7, 1988, and ending on September 8, 1988. Eligible persons shall register and vote following the procedures in § 1230.631. Except for absentee ballots, the registration and voting shall take place on September 7 and 8, 1988, at each county ES office during regular office hours.

§ 1230.629 Facilities for registering and voting.

Each county ES office shall provide:

(a) Adequate facilities and space to permit producers and importers to register and mark their ballots in secret; and,

(b) A sealed box or other suitable receptacle for registration forms and ballots which shall be kept under observation during registration and voting hours and secured at all times.

Copies of the Order shall be available for review.

§ 1230.630 Registration form and ballot.

A registration form/envelope marked "PORK REFERENDUM" (Form LS-43-1) and ballot (Form LS-43) shall be used for voting in person. The information required on the registration form, which is printed on an envelope, includes name, address, phone number, and voter status (producer or importer). The registration form/envelope also contains a certification statement, referenced in § 1230.631(a)(1). The ballot requires producers and importers to check a "yes" or a "no." A similar registration form and ballot (Form LS-42) shall be used for absentee voting.

§ 1230.631 Registration and voting procedure.

(a) *Registering and voting in person.* (1) Each producer and importer desiring to vote in the referendum shall register on the days of voting at the ES office for the county in which the producer's or importer's residence is located or at the ES office serving the county in which the producer's or importer's residence is located. Producers or importers other than individuals shall register at the ES office in the county in which their headquarters office or business is located or at the ES office serving the county in which the entities' headquarters office or business is located. Producers and importers will be required to list their names on the voter registration list (Form LS-43-2) prior to receiving a registration form and ballot. To register, each producer or importer shall complete the registration form/envelope and certify that:

(i) They or the entity they represent were producers or importers during the specified representative period; and,

(ii) If voting on behalf of an entity referred to in § 1230.627 they are authorized to do so.

(2) Each eligible producer or importer who has not voted by means of an absentee ballot may cast a ballot in person at the location and time set forth in § 1230.628. Eligible persons who enter their names on the voter registration list (Form LS-43-1) will receive a registration form/envelope (Form LS-43-1), an envelope marked "PORK BALLOT" (LS-42-2), and a ballot (Form LS-43). Voting shall be by secret ballot under the supervision of the local county ES agent or designee. The ballot shall be marked by the voter to indicate "yes" or "no." Voters shall place their marked ballots in the envelope marked "PORK BALLOT", seal it and place it in the completed and signed registration form/envelope marked "PORK REFERENDUM", seal that envelope and personally place it in a box marked "Ballot Box" or other designated receptacle.

(b) *Absentee voting.* (1) Eligible producers or importers unable to vote in person may request and obtain a combined absentee registration form and absentee ballot (Form LS-42) and two envelopes—one marked "PORK BALLOT" (Form LS-42-2) and the other marked "PORK REFERENDUM" (Form LS-42-1) by mail or in person from the State ES office of the State in which they reside if individuals, or where their headquarters office or business is located, if a corporation or other entity. To facilitate mailing of absentee ballots the "PORK REFERENDUM" envelope will be preaddressed with the address of the appropriate county ES office if:

(i) The person or other entity referred to in § 1230.627 requesting the absentee ballot includes in the address his or her county of residence or county in which the headquarters office or business is located; or,

(ii) The county in which the residence, headquarters office, or business is located can be otherwise determined.

Only one absentee registration form and absentee ballot will be provided to each eligible producer or importer. Form LS-42 must be requested in writing and will be available for distribution from State ES offices from August 1, 1988, to August 26, 1988. The State ES office shall enter on the absentee voter request list (Form LS-42-3) the name and address of each person or entity requesting an absentee ballot and the date the Form LS-42 was mailed. A copy of the applicable absentee voter request list (Form LS-42-3) prepared by the State ES office shall be provided to the appropriate county ES agent who shall deliver it to each ASCS county office as provided for in § 1230.635 for absentee voter verification.

(2) To register, eligible producers or importers must complete and sign the registration form (Form LS-42), and certify that:

(i) They or the entity they represent were producers or importers during the specified representative period; and,

(ii) If voting on behalf of an entity referred to in § 1230.627, they are authorized to do so.

(3) A producer or importer, after completing the registration form and marking the ballot, shall remove the ballot portion of Form LS-42 and seal the completed ballot in a separate envelope marked "PORK BALLOT" and place it in a second envelope marked "PORK REFERENDUM" along with the signed registration form. Producers and importers shall print and sign their names on the envelope marked "PORK REFERENDUM" and mail or deliver it to the ES office of the county in which they reside or the ES office serving the county in which they reside. In the case of a partnership, corporation, estate, or other entity, the registration form and ballot must be mailed or delivered to the ES office in the county in which its headquarters office or business is located or the ES office serving the county in which its headquarters office or business is located.

(4) Absentee ballots must be received in the county ES office by the close of business, September 1, 1988. Absentee ballots received after that date shall be counted as invalid ballots. Upon receiving the "PORK REFERENDUM" envelope containing the registration form and ballot, the county ES agent or designee shall place it, unopened in a secure ballot box. The county ES agent or his designee shall enter the names of absentee voters on the voter registration list (Form LS-43-2).

(5) A person casting an absentee ballot which is not recorded as being received or which is received after the deadline specified in this section may vote in person at the appropriate county ES office on the days of the referendum.

§ 1230.632 List of registered producers and importers.

The voter registration list (Form LS-43-2) shall be available for inspection during the voting period on September 7 and 8, 1988, at the county ES office and on September 12, 1988, at the ASCS county office. At the ASCS county office it shall be posted during regular office hours in a conspicuous public location.

§ 1230.633 Challenge of eligibility.

(a) *Challenge period.* During the days of the referendum, the names of challenged voters may be reported to the ES county agent who will refer them to the ASCS county office. After that, the names of challenged voters shall be referred directly to the ASCS county office. A challenge of a person's eligibility to vote may be made no later than the close of business on September 12, 1988.

(b) *Who may challenge.* A person's eligibility to vote may be challenged by any person. Any such challenge must be in writing and signed by the person making the challenge.

(c) *Determination of challenges.* The ASC county committee or its representative shall make a determination concerning the eligibility of a producer or importer who has been challenged and notify challenged producers and importers as soon as practicable, but not later than 5 business days after the ending date of the voting period. If the ASC county committee or its representative is unable to determine whether a person was a producer or importer during the representative period, it may require the person to submit records such as sales documents, purchase documents, or other similar documents to prove that the person was a producer or importer during the representative period.

(d) *Challenged ballot.* The registration form/envelopes (Form LS-43-1) containing the ballots cast by producers and importers voting in person whose eligibility is challenged shall be removed from the ballot box and placed in a separate box until the challenge has been resolved. Envelopes containing absentee voter registration forms and absentee ballots (Form LS-42) of challenged absentee voters also shall be removed from the ballot box and placed in the box containing ballots of challenged producers and importers. A challenged ballot shall be determined to have been resolved if the determination of the ASC county committee or its representative is not appealed within the time allowed for appeal or there has been a determination by the ASC county committee after the appeal.

(e) *Appeal.* A person declared to be ineligible to register and vote by the ASC county committee or its representative may file an appeal at the ASCS county office within 3 business days after notification of such decision. Such person may be required to provide documentation such as sales documents or purchase documents in order to demonstrate his or her eligibility. An appeal shall be determined by the ASC county committee as soon as practicable, but in all cases not later than the 9th business day after the ending date of the referendum. The ASC county committee's determination on an appeal is final.

§ 1230.634 Receiving ballots.

A ballot shall be considered to have been received during the voting period if:

(a) It was cast in the county ES office prior to the close of business on September 8, 1988; or,

(b) An absentee ballot was received in the county ES office not later than close of business on September 1, 1988.

§ 1230.635 Canvassing ballots.

(a) *Counting the ballots.* The county ES agent or designee shall deliver: The sealed ballot box; the voter registration list (Form LS-43-2); and the absentee voter request list (Form LS-42-3) to the ASCS county office by the close of business on the first business day after the end of the voting period. ASCS county employees and the county ES agent or designee shall check the registration forms of all voters against the voter registration list (Form LS-43-2) and the absentee voter request list (Form LS-42-3) to determine properly registered voters. The ballots of producers or importers voting in person whose names are not on the voter registration list (Form LS-43-2) shall be declared invalid. Likewise, the ballots of producers or importers voting absentee, whose names are not on the absentee voter request list (Form LS-42-3) shall be declared invalid. Ballots declared invalid and all ballots of challenged voters declared ineligible shall be kept separate from the other ballots and the envelopes containing these ballots shall not be opened. The valid ballots shall be counted on September 22, 1988. ASCS county office employees shall remove the sealed "PORK BALLOT" envelopes from the registration form/envelopes or absentee ballot envelopes of all eligible voters and all challenged voters determined to be eligible. When removing the "PORK BALLOT" envelopes, steps shall be taken to ensure that the voter's name cannot be identified. After removing all "PORK BALLOT" envelopes, ASCS county employees shall open them and count the ballots. The ballots shall be tabulated as follows:

(1) Number of eligible producers and importers casting valid ballots,

(2) Number of producers and importers favoring the Order,

(3) Number of producers and importers not favoring the Order,

(4) The number of challenged ballots,

(5) The number of challenged ballots deemed ineligible,

(6) Number of invalid ballots, and

(7) The number of spoiled ballots.

(b) *Invalid ballots.* Ballots shall be declared invalid if a producer or importer voting in person has failed to sign the voter registration list (Form LS-43-2), or an absentee voter's name is not on the absentee voter request list (Form LS-42-3), or the registration form or ballot was incomplete or incorrectly completed.

(c) *Spoiled ballots.* Ballots shall be considered as spoiled ballots when they are mutilated or marked in such a way that it cannot be determined whether it is a "yes" or a "no" vote. Spoiled ballots shall not be considered as approving or disapproving the Order, or as a ballot cast in the referendum.

(d) *Confidentiality.* All ballots shall be confidential and the contents of the ballots shall not be divulged except as the Secretary may direct. The public may witness the opening of the ballot box and tabulation of the votes but may not interfere with the process.

§ 1230.636 ASCS county office report.

The ASCS county office shall notify promptly the ASCS State office of the results of the referendum. Each ASCS county office shall transmit the results of the referendum in its county to the ASCS State office. Such report shall include the information listed in § 1230.635. The results of the referendum in each county may be made available to the public immediately after the ballots have been counted and any necessary verification of accuracy has been completed. A copy of a report of those results shall then be posted for 30 days in the ASCS county office in a conspicuous place accessible to the public, and a copy shall be kept on file in the ASCS county office for a period of at least 12 months.

§ 1230.637 ASCS State office report.

Each ASCS State office shall promptly transmit to the Deputy Administrator a written summary of the results of the referendum received from all the ASCS county offices within the State. The summary shall include the information on the referendum results contained in the reports from all county offices within each State and be certified by the ASCS State executive director. The ASCS State office shall maintain a copy of the summary where it shall be available for public inspection for a period of not less than 12 months.

§ 1230.638 Results of the referendum.

(a) The Deputy Administrator shall promptly submit to the Administrator the results of the referendum. The Administrator shall promptly prepare and submit to the Secretary a report of the results of the referendum. The results of the referendum shall be issued by the Department in an official press release and published in the FEDERAL REGISTER. State reports, and related papers shall be available for public inspection in the office of the Marketing Programs and Procurement Branch, Livestock and Seed Division, Agricultural Marketing Service, USDA, Room 2610 South Agriculture Building, 14th and Independence Avenue SW., Washington, DC.

(b) If the Secretary deems it necessary, the report of any State or county shall be reexamined and checked by such persons that may be designated by the Deputy Administrator or the Secretary.

§ 1230.639 Disposition of ballots and records.

Each ASCS county executive director shall place in sealed containers marked with the identification of the referendum, the voter registration list, absentee voter request list, voted ballots, challenged registration forms/envelopes, challenged absentee voter registration forms, challenged ballots found to be ineligible, invalid ballots, spoiled ballots, and county summaries. Such records shall be placed under lock in a safe place under the custody of the ASCS county executive director for a period of not less than 12 months after the referendum. If no notice to the contrary is received from the Deputy Administrator by the end of such time, the records shall be destroyed.

§ 1230.640 Instructions and forms.

The Administrator may prescribe additional instructions and forms not inconsistent with the provisions of this subpart to govern the conduct of the referendum.

PART 1240—HONEY RESEARCH, PROMOTION, AND CONSUMER INFORMATION ORDER

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AUTHORITY: Honey Research, Promotion, and Consumer Information Act, Secs. 1-13, 98 Stat. 3115; 7 U.S.C. 4601-4612.

SOURCE: 51 FR 26148, July 21, 1986; 51 FR 29210, Aug. 15, 1986, unless otherwise noted.

DEFINITIONS

§ 1240.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any other officer or employee of the Department of Agriculture to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his/her stead.

§ 1240.2 Act.

"Act" means the Honey Research, Promotion, and Consumer Information Act (Pub. L. 98-590) and any amendments thereto.

§ 1240.3 Person.

"Person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity.

§ 1240.4 Honey.

"Honey" means the nectar and saccharine exudations of plants which are gathered, modified, and stored in the comb by honey bees.

§ 1240.5 Honey products.

"Honey products" means products wherein honey is a principal ingredient.

§ 1240.6 Producer.

"Producer" means any person who produces honey in any State for sale in commerce.

§ 1240.7 Handle.

"Handle" means to process, package, sell, transport, purchase or in any other way place honey or honey products, or cause them to be placed, in the current of commerce. Such term shall include selling unprocessed honey that will be consumed without further processing or packaging. Such term shall not include the transportation of unprocessed honey by the producer to a handler or transportation by a commercial carrier of honey, whether processed or unprocessed for the account of the handler or producer.

§ 1240.8 Handler.

"Handler" means any person who handles honey or honey products.

§ 1240.9 Producer-packer.

"Producer-packer" means any person who is both a producer and handler of honey or honey products.

§ 1240.10 Importer.

"Importer" means any person who imports honey or honey products into the United States as principal or as an agent, broker, or consignee for any person who produces honey outside of the United States for sale in the United States.

§ 1240.11 Promotion.

"Promotion" means any action, including paid advertising and public relations, to present a favorable image for honey or honey products to the public with the express intent of improving the competitive position and stimulating sales of honey or honey products.

§ 1240.12 Research.

"Research" means any type of systematic study or investigation, and/or the evaluation of any study or investigation designed to advance the image, desirability, usage, marketability, production, or quality of honey or honey products.

§ 1240.13 Consumer education.

"Consumer education" means the act of providing information to the public on the usage and care of honey and honey products.

§ 1240.14 Marketing.

"Marketing" means the sale or other disposition in commerce of honey or honey products.

§ 1240.15 Committee.

"Committee" means or the "National Honey Nominations Committee" means the Committee established pursuant to § 1240.32.

§ 1240.16 State association.

"State association or "association" means that organization of beekeepers in a State which is generally recognized as representing the beekeepers of that State.

§ 1240.17 Honey Board.

"Honey Board" or the "Board" means the administrative body established pursuant to § 1240.30.

§ 1240.18 State.

"State" means any of the fifty States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

§ 1240.19 Fiscal period and marketing year.

"Fiscal period" and "marketing year" means the 12-month period ending on December 31 or such other consecutive 12-month period as shall be recommended by the Board and approved by the Secretary.

§ 1240.20 Plans and projects.

"Plans" and "projects" means those research, promotion, and consumer education plans, studies, or projects established pursuant to §§ 1240.38 and 1240.39.

§ 1240.21 Part and subpart.

"Part" means the Honey Research, Promotion, and Consumer Information Order and all rules, regulations, and supplemental orders issued thereunder, and the order shall be a "subpart" of such part.

HONEY BOARD

§ 1240.30 Establishment and membership.

A Honey Board (hereinafter called the "Board") is hereby established to administer the terms and provisions of this part. The Board shall consist of thirteen (13) members, each of whom shall have an alternate. Seven members and seven alternates shall be honey producers, two members and two alternates shall be honey handlers, two members and two alternates shall be honey importers, one member and one alternate shall be an officer or employee of a honey marketing cooperative, and one member and one alternate shall be selected to represent the general public. The Board shall be appointed by the Secretary from nominations submitted by the National Honey Nominations Committee pursuant to § 1240.32.

§ 1240.31 Term of office.

The members of the Board and their alternates shall serve for terms of three years, except the members of the initial Board shall be designated for, and shall serve terms as follows: Four members and alternates shall serve for one-year terms; four shall serve for two-year terms; and five shall serve for three-year terms. No member or alternate shall serve more than two consecutive terms: *Provided*, That those members and alternates serving the initial term of one year may serve two additional consecutive three-year terms. The term of office for the initial Board shall begin immediately on appointment by the Secretary. In subsequent years, the term of office shall begin on April 1. Each member and alternate member shall continue to serve until his/her successor is selected and has accepted.

§ 1240.32 Nominations.

All nominations to the Board authorized under § 1240.30 herein shall be made in the following manner.

(a) *Establishment of National Honey Nominations Committee.* (1) There is hereby established a National Honey Nominations Committee, hereinafter called the "Committee", which shall consist of not more than one member from each State, appointed by the Secretary from nominations submitted by each State Association. Wherever there is more than one eligible association within a State, the Secretary shall designate the association most representative of the honey producers, handlers, and importers not exempt under § 1240.42(a) to make nominations for that State.

(2) If a State Association does not submit a nomination for the Committee, the Secretary may select a member of the honey industry from that State to represent that State on the Committee. However, if a State which is not one of the top twenty honey producing States (as determined by the Secretary) does not submit a nomination, such State shall not be represented on the Committee.

(3) Members of the Committee shall serve for three-year terms, except members of the initial Committee shall serve for terms as follows: One-third of such members shall serve one-year terms; one-third shall serve two-year terms; and one-third shall serve three-year terms. No member shall serve more than two consecutive three-year terms: *Provided*, That those members serving the initial term of one year may serve two additional consecutive three-year terms. The term of office for the initial Committee shall begin immediately on appointment by the Secretary. In subsequent years, the term of office shall begin on January 1.

(4) The Committee shall select its Chairperson by a majority vote.

(5) The members of the Committee shall serve without compensation, but shall be reimbursed for necessary and reasonable expenses incurred in performing their duties as members of the Committee and approved by the Board. Such expenses shall be paid

from funds collected by the Board pursuant to § 1240.41.

(b) *Nominations to the Board.* (1) Except for the member and alternate who represent the general public, the Committee shall nominate the members and alternate members of the Honey Board and submit such nominations promptly to the Secretary for approval. The Committee shall also submit a list of candidates to the Secretary for the public member and alternate public member position. The Secretary may choose from that list of names or, at his/her discretion, choose other candidates to fill the public member and alternate position.

(2) After the first meeting, the Committee shall meet annually to make such nominations, or at the determination of the Chairperson, the Committee may conduct its business by mail ballot in lieu of an annual meeting.

(3) A majority of the Committee shall constitute a quorum for voting at an annual meeting. In the event of a mail ballot, votes must be received from a majority of the Committee to constitute a quorum.

(4) At least 50 percent of the members from the twenty leading honey-producing states must vote in any nomination of members to the Board.

(5) For the purpose of nominating producer members to the Board, the Secretary shall establish seven regions on the basis of the production of honey. For the purpose of facilitating initial nominations to the Honey Board, the following regions shall be the initial regions: Region 1: Washington, Oregon, Idaho, California, Nevada, Utah, Alaska, and Hawaii. Region 2: Montana, Wyoming, Nebraska, Kansas, Colorado, Arizona, and New Mexico. Region 3: North Dakota and South Dakota. Region 4: Minnesota, Iowa, Wisconsin, and Michigan. Region 5: Texas, Oklahoma, Missouri, Arkansas, Tennessee, Louisiana, Mississippi, and Alabama. Region 6: Florida, Georgia, and Puerto Rico. Region 7: Illinois, Indiana, Ohio, Kentucky, Virginia, North Carolina, South Carolina, West Virginia, Maryland, District of Columbia, Delaware, New Jersey, New York, Pennsylvania, Connecticut, Rhode Island, Massachusetts, New Hampshire, Vermont, and Maine.

(6) Every five years, the Board shall review the regions to determine whether new regions should be established. In making such review, it shall give consideration to:

(i) The average quantity of honey produced during the most recent three years;

(ii) Shifts and trends in quantities of honey produced;

(iii) The equitable relationship of Board membership and districts; and

(iv) Other relevant factors.

As a result of this review, the Board may recommend for the Secretary's approval the reestablishment of such regions. Any such reestablishment of regions shall be made at least six months prior to the date on which terms of office of the Board begin each year and shall become effective at least 30 days prior to such date.

(7) The initial Committee shall within 90 days of the announcement of issuance of this order, or such other period as prescribed by the Secretary, submit in a manner prescribed by the Secretary the following nominations:

(i) One producer member and one alternate producer member from each of the seven regions established by the Secretary;

(ii) Two handler members and two alternate handler members from recommendations made by industry organizations representing handler interests;

(iii) Two importer members and two alternate importer members from recommendations made by industry organizations representing importer interests; and

(iv) One member and one alternate who are officers or employee of honey marketing cooperatives.

(v) For subsequent years, the Committee shall submit its nominations to the Secretary one month before the new Board terms begin.

§ 1240.34 Vacancies.

(a) In the event any member of the Board ceases to be a member of the category of members from which the member was appointed to the Board, such position shall automatically become vacant.

(b) If a member of the Board consistently refuses to perform the duties of a member of the Board, or if a member of the Board engages in acts of dishonesty or willful misconduct, the Board may recommend to the Secretary that he/she be removed from office. If the Secretary finds the recommendation of the Board shows adequate cause, he/she shall remove such member from office.

(c) Should any member position become vacant, the alternate of that member shall automatically assume the position of said member. At its next meeting, the Honey Nominations Committee shall nominate a replacement for said alternate. Should the positions of both a member and such member's alternate become vacant, successors for the unexpired terms of such member and alternate shall be nominated and appointed in the manner specified in §§ 1240.30 and 1240.32, except that said nomination and replacement shall not be required if said unexpired terms are less than six months.

§ 1240.35 Procedure.

(a) Seven members, including alternates acting in place of members of the Board, shall constitute a quorum; *Provided*, That such alternates shall serve only whenever the member is absent from a meeting or is disqualified. Any action of the Board shall require the concurring votes of a majority of those present and voting. At assembled meetings, all votes shall be cast in person.

(b) In matters of an emergency nature when there is not enough time to call an assembled meeting of the Board, the Board may act upon the concurring votes of a majority of its members by mail, telephone, telegraph, or by other means of communication: *Provided*, That each proposition is explained accurately, fully, and substantially identically to each member. All telephone votes shall be promptly confirmed in writing and recorded in the Board minutes.

§ 1240.36 Attendance.

Members of the Board and the members of any special panels shall be reimbursed for reasonable out-of-pocket expenses incurred when performing Board business. The Board shall have the authority to request the attendance of alternates of any or all meetings, notwithstanding the expected or actual presence of the respective members.

§ 1240.37 Powers.

The Board shall have the following powers subject to § 1240.61:

(a) To administer this subpart in accordance with its terms and provisions of the Act;

(b) To make rules and regulations to effectuate the terms and conditions of this subpart;

(c) To require its employees to receive, investigate, and report to the Secretary complaints of violations of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 1240.38 Duties.

The Board shall have, among other things, the following duties:

(a) To meet and organize and to select from among its members a chairperson and such other officers as may be necessary; to select committees and subcommittees from its membership and consultants; to adopt such rules, regulations, and by-laws for the conduct of its business as it may deem advisable.

(b) To employ such persons as it may deem necessary and to determine the compensation and define the duties of each; and to protect the handling of Board funds through fidelity bonds;

(c) To prepare and submit to the Secretary for his/her approval, a budget on a fiscal period basis of its anticipated expenses in the administration of this part including the probable costs of all programs or projects and to recommend a rate of assessment with respect thereto;

(d) To investigate violations of the order and report the results of such investigations to the Secretary for appropriate action to enforce the provisions of the order.

(e) To develop programs and projects and to enter into contracts or agreements with the approval of the Secretary for the development and carrying out of programs or projects of research, development, advertising, promotion, or education, and the payment of the costs thereof with funds collected pursuant to this part;

(f) To maintain minutes, books, and records and prepare and submit to the Secretary such reports from time to time as may be required for appropriate accounting with respect to the receipt and disbursement of funds entrusted to it;

(g) To periodically prepare and make public and to make available to producers and importers, reports of its activities carried out, and at least once each fiscal period to make public an accounting of funds received and expended;

(h) To cause its books to be audited by a certified public accountant at the end of each fiscal period and to submit a copy of each audit to the Secretary;

(i) To give to the Secretary the same notice of meetings of the Board and subcommittees as is given to members in order that representatives of the Secretary may attend such meetings;

(j) To submit to the Secretary such information pertaining to this subpart as he/she may request;

(k) To notify honey producers, producer-packers, handlers, and importers of all Board meetings through press releases of other means;

(l) To appoint and convene, from time to time, working committees drawn from producers, honey handlers, importers, exporters, members of the wholesale or retail outlets for honey, or other members of the public to assist in the development of research, promotion, and consumer education programs for honey; and

(m) To develop and recommend such rules and regulations to the Secretary for approval as may be necessary for the development and execution of projects or activities to effectuate the declared purpose of the Act.

RESEARCH, PROMOTION, AND CONSUMER EDUCATION

§ 1240.39 Research, promotion, and consumer education.

The Board shall develop and submit to the Secretary for approval any plans or projects authorized in this section. Such plans or projects shall provide for:

(a) The establishment, issuance, effectuation and administration of appropriate plans or projects for consumer education, advertising, and promotion of honey and honey products designed to strengthen the position of the honey industry in the marketplace and to maintain, develop, and expand markets for honey and honey products;

(b) The establishment and conduct of marketing research and development projects to the end that the acquisition of knowledge pertaining to honey and honey products or their consumption and use may be encouraged or expanded, or to the end that the marketing and utilization of honey and honey products may be encouraged, expanded, improved or made more efficient: *Provided*, That quality control, grade standards, supply management programs, or other programs that would otherwise limit the right of the individual honey producer to produce honey shall not be conducted under, or as a part of this subpart;

(c) The development and expansion of honey and honey product sales in foreign markets;

(d) A prohibition on advertising or other promotion programs that make any false or unwarranted claims on behalf of honey or its products or false or unwarranted statements with respect to the attributes or use of any competing product;

(e) Periodic evaluation by the Board of each plan or project authorized under this part to insure that each plan or project contributes to an effective and coordinated program of research, education, and promotion and submit such evaluation to the Secretary. If the Board or the Secretary finds that a plan or project does not further the purposes of the Act, then the Board shall terminate such plan or project; and

(f) The Board to enter into contracts or make agreements for the development and carrying out of research, promotion, and consumer education, and pay for the costs of such contracts or agreements with funds collected pursuant to § 1240.41.

EXPENSES AND ASSESSMENTS

§ 1240.40 Budget and expenses.

(a) At the beginning of each fiscal period, or as may be necessary thereafter, the Board shall prepare and recommend a budget on a fiscal period basis of its anticipated expenses and disbursements in the administration of the Order, including expenses of the Committee and probable costs of research, promotion, and consumer education.

(b) The Board is authorized to incur expenses for research, promotion, and consumer education, such other expenses for the administration, maintenance, and functioning of the Board and the Committee as may be authorized by the Secretary, any operating reserve established pursuant to § 1240.44, and those administrative costs incurred by the Department specified in paragraph (c) of this section. The funds to cover such expenses shall be paid from assessments collected pursuant to § 1240.41, donations from any person not subject to assessments under this order and other funds available to the Board including those collected pursuant to § 1240.67 and subject to the limitations contained therein.

(c) The Board shall reimburse the Department from assessments for administrative costs incurred by the Department with respect to this order after its promulgation. The Department shall also be reimbursed for administrative expenses incurred by it for the conduct of referenda.

§ 1240.41 Assessments.

(a) Each producer and importer shall pay to the Board, upon demand, his/her pro rata share of such expenses as may be approved by the Secretary pursuant to § 1240.40. Such pro rata share shall be the amount established by the Secretary pursuant to paragraph (c) of this section.

(b) Except as provided in § 1240.42 and in paragraphs (e), (f), and (g) of this section, the first handler shall be responsible for the collection of such assessment from the producer and payment thereof to the Board. The first handler shall maintain separate records for each producer's honey handled, including honey produced by said handler.

(c) The assessment on honey shall be levied at a rate fixed by the Secretary which shall be $0.01 per pound of honey or honey used in honey products during the first fiscal period (or portion thereof) after this order is approved in referendum. After that first year, the Board may request the Secretary to increase the assessment rate not more than $0.005 per pound of honey per year: *Provided*, That the assessment never exceeds $0.04 per pound of honey per year. After the first year, the Board may request the Secretary to decrease the assessment rate by any amount it sees fit.

(d) Should a deficit occur during any fiscal period, funds to cover the deficit may be obtained by increasing the rate of assessment subject to the limitations in paragraph (c) of this section. The increased rate of assessment shall be applied to all honey and the honey used in products wherein honey is the primary ingredient sold in the States during that particular fiscal period so that the total payments by each person during each fiscal period will be proportional to the total value of the honey and honey products sold during that period.

(e) The importer of imported honey and honey products shall pay the assessment to the Board at the time of entry of such honey and honey products into any State.

(f) Producer-packers shall pay to the Board the assessment on the honey for which they act as first handler.

(g) Whenever a loan is made on honey under the Honey Loan-Price Support Program, the Secretary shall provide that the assessment be deducted from the proceeds of the loan, and that the amount of such assessment shall be forwarded to the Board, except that the assessment shall not be deducted by the Secretary in the case of a honey marketing cooperative that has already deducted the assessment. When such loan is redeemed, the Secretary shall provide the producer with proof of payment of the assessment.

(h) Assessments shall be paid to the Board at such time and in such manner as the Board, with the Secretary's approval, directs pursuant to regulations issued hereunder. Such regulations may provide for different handler, importer, or producer-packer payment schedules so as to recognize differences in marketing or purchasing practices and procedures.

(i) There shall be a late payment charge imposed on any handler, importer, or producer-packer who fails to remit to the Board the total amount for which any such handler, importer, or producer-packer is liable on or before the payment due date established by the Board under paragraph (h) of this section. The amount of the late payment charge shall be set by the Board subject to approval by the Secretary.

(j) There shall also be imposed on any handler, importer, or producer-packer subject to a late payment charge, an additional charge in the form of interest on the outstanding portion of any amount for which the handler, importer, or producer-packer is liable. The rate of such interest shall be prescribed by the Board subject to approval by the Secretary, but shall not exceed the maximum legal rate of interest, if any, as established by Congress.

(k) The Board is hereby authorized to accept advance payment of assessments by handlers, importers, or producer-packers that shall be credited toward any amount for which the handlers, importers or producer-packers may become liable. The Board is not obligated to pay interest on any advance payment.

(l) The Board is hereby authorized to borrow money for the payment of expenses subject to the same fiscal, budget, and audit controls as other funds of the Board.

§ 1240.42 Exemption from assessment.

(a) A producer who produces less than 6,000 pounds of honey per year, or a producer-packer who produces and handles less than 6,000 pounds of honey per year or an importer who imports less than 6,000 pounds of honey per year shall be exempt from the assessment.

(b) To claim such exemption, a producer, producer-packer, or importer shall submit an application to the Board stating that his/her production, handling or importation of honey shall not exceed 6,000 pounds for the year for which the exemption is claimed.

(c) The Board may recommend to the Secretary that honey exported from the States be exempted from the provisions of this order, and include procedures for the refund of assessments on such honey and such safeguards as may be necessary to prevent improper use of this exemption.

(d) The Board shall determine those States that are operating a program with objectives comparable to the objectives of the Act and recommend to the Secretary that they be exempted from a portion of the assessments collected by the Federal program. The amount of such assessments subject to exemption shall not exceed the amount authorized by the State plan on January 1, 1985, unless a State provides evidence that it was in the process of promulgating a different assessment level on January 1, 1985, then the new assessment level promulgated will be exempt upon approval of the honey producers in that State. Producers having an exemption from a portion of the assessments under this order, due to payment of assessments to a State plan, shall be required to furnish evidence to the Board that the assessments to the State plan have been paid.

§ 1240.43 Producer, importer, and State assessment plan refund.

(a) Any producer or importer who pays an assessment under the authority of this part shall have the right to demand and receive from the Board a refund of such assessment upon submission of proof to the staff of the

Board that the producer or importer paid the assessment for which refund is sought, except that producers who have honey pledged as collateral for a loan under the Honey Loan-Price Support Program and therefore have paid the assessment, shall not be eligible for a refund until the loan has been repaid, or the honey has been turned over to the Commodity Credit Corporation. The amount of refunds during any year made to importers, as a percentage of total assessments collected from all importers, shall not exceed the amount of refunds made to domestic producers, as a percentage of total assessments collected from such producers. Any demand for refund shall be made by the producer or importer within the time and in the manner prescribed by the Board and approved by the Secretary. Refunds made in accordance with this section shall be paid by the Board in June and December of each year.

(b) Any State authority operating pursuant to a State assessment plan satisfying the conditions of paragraph (b)(1) of this section may obtain a refund of assessments collected by the Board on honey and/or honey products produced in that State except as provided in paragraph (b)(2) of this section.

(1) Refunds shall be paid only if the Secretary certifies that the State assessment plan:

(i) Is comparable to the program established under the Act and this part; and

(ii) Was in existence and in operation on January 1, 1985.

(2) Refunds shall be made directly to States, except that any refunds due directly to producers under this part shall take precedence over State programs and in no event exceed the amount collected by the Board on honey produced in the requesting State, and the amount of any refund shall be limited in accordance with the provisions of this subpart.

(3) Refunds made to a State authority pursuant to this paragraph shall not be included in the formula pertaining to importer refunds as set forth in paragraph (a) of this section.

§ 1240.44 Operating reserve.

The Board may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in any reserve so established: *Provided*, That the funds in the reserve shall not exceed one fiscal period's budget. Subject to approval by the Secretary, such reserve funds may be used to defray any expenses authorized under this part.

Reports, Books, and Records

§ 1240.50 Reports.

Each handler, importer, and producer-packer who is subject to this part shall be required to report to the employees of the Board, at such times and in such manner as it may prescribe, such information as may be necessary for the Board to perform its duties. Such reports shall include, but shall not be limited to the following:

(a) For handlers and producer-packers; total quantity of honey acquired during the reporting period; total quantity handled during period; amount of honey acquired from each producer, giving name and address of each producer, including those producers who claim exemption from assessment; copy of statement claiming exemption from assessment from those who claim such exemption; assessments collected or collectible during the reporting period; quantity of honey processed for sale from producer-packer's own production; and record of each transaction for honey on which assessment had already been paid, including statement from seller that assessment had been paid.

(b) For importers; total quantity of honey imported during the reporting period and a record of each importation of honey during such period, giving quantity, date, and port of entry.

§ 1240.51 Books and records.

Each handler, importer, and producer-packer shall maintain and during normal business hours make available for inspection by employees of the Board or the Secretary, such books and records as are necessary to carry out the provisions of this subpart and the regulations issued thereunder, including such records as are necessary to verify any required reports. Such records shall be maintained for two years beyond the fiscal period of their applicability.

§ 1240.52 Confidential treatment.

All information obtained from the books, records, or reports required to be maintained under §§ 1240.50 and 1240.51 shall be kept confidential and shall not be disclosed to the public by any person. Only such information as the Secretary deems relevant shall be disclosed to the public and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart: Except that nothing in this subpart shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of a number of handlers or importers subject to any order, if such statements do not identify the information furnished by any person;

(b) The publication by direction of the Secretary, of the name of any person convicted of violating this subpart, together with a statement of the particular provisions of the Order violated by such person.

(c) Any disclosure of any confidential information by any employee of the Board shall be considered willful misconduct.

MISCELLANEOUS

§ 1240.60 Influencing governmental action.

No funds collected by the Board under this order shall in any manner be used for the purpose of influencing governmental policy or action, except for making recommendations to the Secretary as provided for in this subpart.

§ 1240.61 Right of the Secretary.

All fiscal matters, programs or projects, rules or regulations, reports, or other substantive actions proposed and prepared by the Board shall be submitted to the Secretary for approval.

§ 1240.62 Suspension or termination.

(a) The Secretary shall, whenever he/she finds that this subpart or any provision thereof obstructs or does not tend to effectuate the declared policy of the Act, terminate or suspend the operation of this subpart or such provisions thereof.

(b) Five years from the date the Secretary issues an order authorizing the collection of assessments on honey under provisions of this subpart, and every five years thereafter, the Secretary shall conduct a referendum to determine if honey producers and importers favor the continuation, termination, or suspension of this subpart.

(c) The Secretary shall hold a referendum on the request of the Board, or when petitioned by 10 percent or more of the honey producers and importers to determine if the honey producers and importers favor termination or suspension of this subpart.

§ 1240.63 Proceedings after termination.

(a) Upon the termination of this subpart, the Board shall recommend to the Secretary not more than five of its members to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all funds and property then in possession or under control of the Board, including claims for any funds unpaid or property not delivered or any other claim existing at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contracts or agreements entered into by it pursuant to § 1240.38;

(3) From time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to such person as the Secretary may direct; and

(4) Upon the direction of the Secretary, execute such assignments or other instruments necessary or appro-

priate to vest in such person full title and right to all of the funds, property, and claims vested in the Board or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this subpart shall be subject to the same obligations as imposed upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be returned to the persons who contributed such funds, or paid assessments, or if not practicable, shall be turned over to the Department to be utilized, to the extent practicable, in the interest of continuing one or more of the honey research or education programs hitherto authorized.

§ 1240.64 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or any regulation issued thereunder, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued thereunder;

(b) Release or extinguish any violation of this subpart or of any regulation issued thereunder; or

(c) Affect or impair any rights or remedies of the United States, or of any person, with respect to any such violation.

§ 1240.65 Personal liability.

No member, alternate member, or employee of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate member, or employee, except for acts of dishonesty or willful midconduct.

§ 1240.66 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of this subpart, or the applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1240.67 Patents, copyrights, inventions, and publications.

Except for a reasonable royalty paid to the inventor of a patented invention, any patents, copyrights, inventions, product formulations, or publications developed through the use of funds collected under the provisions of this subpart shall be the property of the United States government as represented by the Board. Funds generated by such patents, copyrights, inventions, product formulations, or publications shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board.

Subpart—General Rules and Regulations

SOURCE: 52 FR 3103, Feb. 2, 1987, unless otherwise noted.

§ 1240.100 Terms defined.

Unless otherwise defined in this subpart, definitions of terms used in this subpart shall have the same meaning as the definitions of such terms which appear in Subpart—Honey Research, Promotion, and Consumer Information Order. Additional terms are defined in § 1240.105.

§ 1240.105 Definitions.

(a) "Principal ingredient" means fifty-one percent or more by weight of the total ingredients contained in honey products.

(b) "First handler" means the person who first handles honey.

(c) "Order" means the Honey Research, Promotion, and Consumer Information Order which appears in this part.

(d) "United States" means the fifty States, the District of Columbia, and the Commonwealth of Puerto Rico.

§ 1240.106 Communications.

Communications in connection with the Order and all rules, regulations, and supplemental Orders issued thereunder shall be addressed to the National Honey Board, 9595 Nelson Road, Box C, Longmont, Colorado 80501.

§ 1240.107 Policy and objective.

(a) It shall be the policy of the Board to carry out an effective and continous coordinated program of marketing research, development, advertising, and promotion in order to help maintain and expand existing domestic and foreign markets for honey and to develop new or improved markets.

(b) It shall be the objective of the Board to carry out programs and projects which will provide maximum benefit to the honey industry and no undue preference shall be given to any of the various industry segments.

§ 1240.108 Contracts.

The Board, with the approval of the Secretary, may enter into contracts or make agreements with persons for the development and submission to it of plans or projects authorized by the Order and for carrying out of such plans or projects. Contractors shall agree to comply with the provisions of this part. Subcontractors who enter into contracts or agreements with a primary contractor and who receive or otherwise utilize funds allocated by the Board shall be subject to the provisions of this part. All records of contractors and subcontractors applicable to contracts entered into by the Board are subject to audit by the Secretary.

§ 1240.109 Procedure.

The Organization of the Board and the procedure for conducting meetings of the Board shall be in accordance with the By-Laws of the Board.

§ 1240.110 U.S. Department of Agriculture costs.

The Board shall reimburse the U.S. Department of Agriculture (USDA) from assessments for administrative costs incurred by USDA with respect to the Order after its promulgation and for any administrative expenses incurred by USDA for the conduct of referenda. The Board shall pay those administrative costs incurred by USDA for the conduct of its duties under the Order as determined periodically by the Secretary. USDA will bill the Board quarterly and payment shall be due promptly after the billing of such costs.

§ 1240.111 First handler and producer-packer.

Persons who are first handlers or producer-packers include but are not limited to the following:

(a) When a producer delivers honey from his or her own production to a packer or processor for processing in preparation for marketing and consumption, the packer or processor is the first handler, regardless of whether he or she handles the honey for his or her own account or for the account of the producer or the account of other persons.

(b) When a producer delivers honey to a handler who takes title to such honey, and places it in storage, such handler is the first handler.

(c) When a producer delivers honey to a commercial storage facility for the purpose of holding such honey under his or her own account for later sale, the first handler of such honey would be identified on the basis of later handling of such honey.

(d) When a producer packages and sells honey of his or her own production at a roadside stand or other facility to consumers or sells to wholesale or retail outlets or other buyers, the producer is a producer-packer.

(e) When a producer sells unprocessed or processed honey from his or her own production directly to a commercial user or food processor who utilizes such honey as an ingredient in the manufacture of formulated products, the producer is a producer-packer.

(f) When a producer uses honey from his or her own production in the manufacture of formulated products for his or her own account and for the account of others, the producer is the producer-packer.

(g) When a producer delivers a lot of honey to a processor who processes and packages a portion of such lot of honey for his or her own account and sells the balance of the lot, with or without further processing, to another processor or commercial user, the first processor is the first handler for all the honey.

(h) When a producer supplies honey to a cooperative marketing organization which sells or markets the honey, with or without further processing and packaging, the cooperative marketing organization becomes the first handler upon physical delivery to such cooperative.

(i) When a producer uses honey from his or her own production for feeding his or her own bees, such honey is not handled at that time. Honey in any form sold and shipped to any persons for the purpose of feeding bees is handled and is subject to assessment. The buyer of the honey for feeding bees is the first handler.

§ 1240.113 Importer.

Each lot of honey and honey products imported into the United States is subject to assessment under this part. Such assessment shall be paid by the importer of such honey and honey products at the time of entry or withdrawal for consumption into the United States. Any person who imports honey or honey products into the United States as principal, agent, broker, or consignee for honey produced outside the United States and imported into the United States shall be the importer.

§ 1240.114 Exemption procedures.

(a) Producers who produce, producer-packers who produce and handle, and importers who import less than 6,000 pounds of honey per year wishing to claim an exemption from assessments pursuant to § 1240.42 (a) and (b) should submit an application to the Board for a certificate of exemption.

(b) Upon receipt of the claim for exemption, the Board shall investigate, to the extent practicable, the request for exemption. The Board will then issue, if deemed appropriate, an exemption certificate to each person who is eligible to receive one. Producers who are exempt from assessment must present their certificates of exemption to their first handler in order to not be subject to assessment on honey. First handlers, except as otherwise authorized by the Honey Board are required to maintain records showing the exemptee's name and address along with their certificate number assigned by the Board.

(c) The Secretary, upon recommendation by the Board, may exempt that portion of assessments collected under a qualified State plan: *Provided*, That the State plan meets all of the requirements in § 1240.42(d) of the Order.

(1) First handlers collecting assessments from producers for the State plan and the Board shall forward that portion of assessments collected under the order in excess of the State assessment to the Board.

(2) Upon request of the Board, producers having an exemption from a portion of the assessments under this Order due to payment of assessments under a State plan, shall be required to furnish evidence to the Board that the assessments to the State have been paid.

§ 1240.115 Levy of assessments.

(a) *Time of payment.* The assessment shall become due at the time assessable honey is first handled or entered or withdrawn for consumption into the United States pursuant to this part.

(b) An assessment of one cent per pound is levied on honey produced in the United States, on imported honey entered or withdrawn for consumption into the United States, and on honey used in imported honey products entered or withdrawn for consumption into the United States except that assessments shall not be levied on the following:

(1) Any persons other than importers holding a valid exemption certificate during the twelve month period ending on December 31;

(2) That portion of honey which does not enter the current of commerce which is utilized solely to sustain a producers or producer-packer's own colonies of bees;

(3) That portion of otherwise assessable honey which is contained in imported products wherein honey is not a principal ingredient. Honey subject

to assessment shall be assessed only once.

(c) The assessment on each lot of honey handled in the United States shall be paid by the first handler who handles, or by the producer-packer who produces and handles such honey.

(1) The first handler shall collect and pay assessments to the Board unless such handler—

(i) Has obtained from the producer a certificate of exemption from the Board exempting the producer from assessment due to the exclusion in § 1240.42(a) of the Order and § 1240.14 of the regulations, or

(ii) Has received documentation acceptable to the Board that the assessment has been previously paid.

(2) A producer-packer shall pay, or collect and pay, assessments to the Board unless—

(i) Such producer-packer has obtained an exemption from the Board applicable to the honey he or she produced or produced and handled;

(ii) Such producer-packer has obtained from another producer, whose honey the producer-packer handled, a certificate of exemption from the Board exempting that producer from assessment due to the exclusion in § 1240.42(a) of the Order and § 1240.114 of the regulations; or

(iii) Has received documentation acceptable to the Board that the assessment has been previously paid.

(d) Assessments shall be levied with respect to honey pledged as collateral for a loan under the Commodity Credit Corporation (CCC) Honey Price Support Program in accordance with an agreement entered into between the Honey Board and CCC. The assessment will be deducted from the proceeds of the loan by CCC and forwarded to the Board, except that the assessment shall not be deducted in the case of a honey marketing cooperative that has already deducted the assessment or that portion of the assessment paid to a qualified State plan exempted by the Board. When such loan is redeemed, the Department shall provide the producer with proof of payment of assessment.

(e) The U.S. Customs Service (USCS) will collect assessments on all honey or honey products where honey is the principal ingredient imported under its tariff schedule (HTS heading number 0409.00.00) at the time of entry or withdrawal for consumption and forward such assessment as per the agreement between the USCS and USDA. Any importer or agent who is exempt from payment of assessments pursuant to § 1240.42 (a) and (b) of the Order may apply to the Board for reimbursement of such assessments paid.

(f) A late payment charge shall be imposed on any handler, producer-packer, or importer except as otherwise authorized by the Board, who fails to pay to the Board within the time prescribed in this subpart the total amount of assessment due for which any such handler, importer, or producer-packer is liable. Fifteen days after the assessment becomes due a one-time late payment charge of 10 percent will be added to any outstanding funds due the Board.

(g) In addition to the late payment charge, one and one-half percent per month interest on the outstanding balance except as otherwise authorized by the Board, will be added to any accounts delinquent over 30 days and will continue monthly until the outstanding balance is paid to the Board.

[52 FR 3103, Feb. 2, 1987, as amended at 53 FR 37731, Sept. 28, 1988]

§ 1240.116 Payment of assessments.

(a) *Responsibility for payment.* Unless otherwise authorized by the Board under the Act and Order, the first handler or producer-packer shall collect the assessment from the producer, or deduct such assessment from the proceeds paid to the producer on whose honey the assessment is made, and remit the assessments to the Board. The first handler or producer-packer shall furnish the producer with evidence of such payment. Any such collection or deduction of assessment shall be made not later than the time when the assessment becomes payable to the Board. Failure of the handler or producer-packer to collect or deduct such assessment does not relieve the handler or producer-packer of his or her obligation to remit the assessment to the Board. Assessments on imported honey and honey products shall be collected as specified in § 1240.115(e): *Provided,* That importers shall be responsible for payment of any assessment amount not collected by the U.S. Customs Service at the time of entry or withdrawal for consumption into the United States.

(b) *Payment directly to the Board.* Except as provided in paragraph (c) of this section, each first handler and producer-packer shall pay the required assessment pursuant to § 1240.41 of the Order directly to the Board at the address referenced in § 1240.106, for each reporting period specified in § 1240.119, on or before the 15th day following the end of such period. Payment shall be in the form of a check, draft, or money order payable to the Board and shall be accompanied by a report on Board forms pursuant to § 1240.50.

(c) *Prepayment of assessment.* (1) In lieu of the monthly assessment payment specified in § 1240.119 of this subpart, the Board may permit first handlers or producer-packers to make advance payments of their total estimated assessments for the season to the Board prior to their actual determination of assessable honey.

(2) Persons using such procedure shall provide a monthly accounting of actual handling and assessments.

(3) Specific requirements, instructions, and forms for making such advance payments shall be provided by the Board upon request.

(d) *Payment through cooperating agency.* The Board may enter into agreements subject to approval of the Secretary authorizing other organizations to collect assessments in its behalf. All such agreements are subject to the requirements of the Act, Order, and all applicable rules and regulations under the Act and the Order.

§ 1240.117 Refunds.

A refund of assessments may be obtained by a producer, producer-packer only for their own production, or importer only by following the procedures prescribed in the section.

(a) *Application form.* A producer, producer-packer, or importer shall obtain a refund form from the Board by written request which shall bear the producer's, producer-packer's, or importer's signature. For partnerships, corporations, associations, or other business entities, a partner or an officer of the entity must sign the request and indicate his or her title.

(b) *Submission of refund application to Board.* Any producer, producer-packer, or importer requesting a refund shall mail an application on the prescribed form to the Board within 90 days from the date the assessment became payable pursuant to § 1240.115. The refund application shall show the following:

(1) Producer's, producer-packer's, or importer's name and address;

(2) First handler's or handlers' name(s) and address(es);

(3) The number of pounds of honey on which a refund is requested;

(4) Date or inclusive dates on which assessments were paid; and

(5) Producer's, producer-packer's, or importer's signature.

Where more than one producer, producer-packer, or importer shared in the assessment payment, joint or separate refund application forms may be filed. In any such case the refund application shall show in addition to other required information the names, addresses, and proportionate shares of such producers or importers and the signature of each.

(c) *Proof of payment of assessment.* Evidence of payment of assessments satisfactory to the Board shall accompany the producer's, producer-packer's, or importer's refund application.

(d) *Payment of refund.* Refunds will be made in June and December only; applications for refunds payable in June must be received by April 30 and applications for refunds payable in December by October 31. For joint application the remittance shall be payable to all eligible producers, producer-packers, or importers signing the refund application form.

[52 FR 3103, Feb. 2, 1987, as amended at 53 FR 8148, Mar. 14, 1988]

§ 1240.118 Reports of disposition of exempted honey.

The Board may require reports by first handlers and producer-packers on the handling and disposition of exempted honey. Also, authorized employees of the Board or the Secretary may inspect such books and records as are appropriate and necessary to verify the reports on such disposition.

§ 1240.119 Reporting period and reports.

(a) For the purpose of the payment of assessments, a calendar month shall be considered the reporting period; however, other accounting periods may be used when registered with and approved by the Board in writing.

(b) Pursuant to § 1240.50 of the Order, handlers and producer-packers shall file with the Board a report for each reporting period.

(1) All reports shall contain at least the following information:

(i) The handler's or producer-packer's name and address;

(ii) Date of report (which is also date of payment to the Board);

(iii) Period covered by report; and

(iv) Total quantity of honey determined as assessable during the reporting period.

(2) Handlers or producer-packers who collect assessments from producers or withhold assessments for their accounts or pay the assessments themselves shall also include with each report a list of all such producers whose honey was handled during the period, their addresses, and to total assessable quantities handled for each such producer.

(c) Each importer shall file with the Board a monthly report containing at least the following information:

(1) The importer's name and address.

(2) The quantity of honey and honey products entered or withdrawn for consumption into the United States.

(3) The amount of assessment paid on honey and honey products entered or withdrawn for consumption into the United States to the U.S. Customs Service at the time of entry or withdrawal for consumption.

(4) The amount of any honey and honey products on which the assessment was not paid to the U.S. Customs Service at the time of entry or withdrawal for consumption into the United States.

(d) In the event of a first handler's, producer-packer's, or importer's death, bankruptcy, receivership, or incapacity to act, the representative of the handler, producer-packer, or importer or his or her estate, shall be considered the first handler, producer-packer, or importer for the purposes of this part.

§ 1240.120 Retention period for records.

Each first handler, producer-packer, and importer required to make reports pursuant to this subpart shall maintain and retain for at least two years beyond the marketing year of their applicability: One copy of each report made to the Board, records of all exempt producers, producer-packer, and importers including certification of exemption as necessary to verify the address of each exempt producer, producer-packer, and importer and such records as are necessary to verify such reports.

§ 1240.121 Availability of records.

Each first handler, producer-packer, and importer required to make reports pursuant to this subpart shall make available for inspection by authorized employees of the Board or the Secretary during regular business hours, such records as are appropriate and necessary to verify reports required under this subpart.

§ 1240.122 Confidential books, records, and reports.

All information obtained from the books, records, and reports of handler, producer-packer, and importers and all information with respect to refunds of assessments made to individual producers and importers shall be kept confidential in the manner and to the extent provided for in § 1240.52 of the Order.

§ 1240.123 Right of the Secretary.

All fiscal matters, programs, projects, rules or regulations, reports, or other substantive action proposed and prepared by the Board shall be submitted to the Secretary for approval.

§ 1240.124 Personal liability.

No member of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate member, or employee except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

§ 1240.125 OMB control number.

The control number assigned to the information collection requirements by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96-511, is as follows: 0581-0153.

Subpart—Procedure for the Conduct of Referenda in Connection With the Honey Research, Promotion, and Consumer Information Order

AUTHORITY: Pub. L. 98-590, 7 U.S.C. 4601-4612.

SOURCE: 51 FR 17918, May 16, 1986, unless otherwise noted.

§ 1240.200 General.

Referenda to determine whether eligible producers and importers favor the issuance, continuance, termination, or suspension of a Honey Research, Promotion, and Consumer Information Order shall be conducted in accordance with this subpart.

§ 1240.201 Definitions.

(a) "Act" means the Honey Research, Promotion, and Consumer Information Act, Pub. L. 98-590, 98th Congress, approved October 30, 1984, 7 U.S.C. 4601-4612.

(b) "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead; and "Department" means the U.S. Department of Agriculture.

(c) "Administrator" means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(d) "Order" means the order (including an amendment to the order) with respect to which the Secretary has directed that a referendum be conducted.

(e) "Referendum agent" means the individual or individuals designated by the Secretary to conduct the referendum.

(f) "Representative period" means the period designated by the Secretary pursuant to section 12 of the Act.

(g) "Person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity. For the purpose of this definition, the term "partnership" includes, but is not limited to:

(1) A husband and wife who have title to, or leasehold interest in, honey bee colonies or beekeeping equipment as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property, and

(2) So-called "joint ventures" wherein one or more parties to the agreement, informal or otherwise, contributed capital and others contribute labor, management, equipment, or other services, or any variation of such contributions by two or more parties, so that it results in the production or importation of honey or honey products for market and the authority to transfer title to the honey and honey products so produced or imported.

(h) "Eligible producer" means any person defined as a producer or producer-packer in the order who produces, or handles, or produces and handles 6,000 pounds or more of honey or honey products during the representative period and who: (1) Owns or shares in the ownership of honey bee colonies or beekeeping equipment resulting in the ownership of the honey produced; (2) Rents honey bee colonies or beekeeping equipment resulting in the ownership of all or a portion of the honey produced; or (3) Owns honey bee colonies or beekeeping equipment but does not manage them and, as compensation, obtains the ownership of a portion of the honey produced; (4) Is a party in a lessor-lessee relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce honey who share the risk of loss and receive a share of the honey produced. No other acquisition of legal title to honey shall be deemed to result in persons becoming eligible producers.

(i) "Eligible importer" means any person defined as an importer in the order, engaged in the importation of honey and/or honey products with total importation of 6,000 pounds or more during the representative period. Importation occurs when commodities originating outside the States are released from custody of the U.S. Customs Service and introduced into the stream of commerce within the States. Included are persons who hold title to foreign-produced honey and/or honey products immediately upon release by the Customs Service, as well as any persons who act on behalf of others, as agents or brokers, to secure the release of honey and/or honey products from Customs and introduce them into the current of commerce.

(j) "Honey Board" means the administrative board provided for under section 7(c) of the Act.

§ 1240.202 Voting.

(a) Each person who is an eligible producer or importer, as defined in this subpart, at the time of the referendum and during the representative period, shall be entitled to only one vote in the referendum. However, each producer in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce honey and/or honey products, in which more than one of the parties is a producer, shall be entitled to one vote in the referendum covering only his or her share of the ownership.

(b) Proxy voting is not authorized, but an officer or employee of a eligible corporate producer or importer, or an administrator, executor, or trustee of an eligible producing or importing estate may cast a ballot on behalf of such producer, importer or estate. Any individual so voting in a referendum shall certify that he or she is an officer or employee of the eligible producer or importer, or an administrator, executor, or trustee of an eligible producing or importing estate, and that he or she has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) Each eligible producer and importer shall be entitled to cast only one ballot in the referendum.

§ 1240.203 Instructions.

The referendum agent shall conduct the referendum, in the manner herein provided, under supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the time of commencement and termination of the period of the referendum, and the time when all ballots may be cast.

(b) Determine whether ballots may be cast by mail, at polling places, at meetings of producers or importers, or by any combination of the foregoing.

(c) Provide ballots and related material to be used in the referendum. Ballot material shall provide for recording essential information including that needed for ascertaining:

(1) Whether the person voting, or on whose behalf the vote is cast, is an eligible voter,

(2) The amount of honey produced by the voting producer during the representative period,

(3) The total volume of honey and/or honey products produced and/or imported during the representative period, and

(4) In a joint venture, names of the parties and each one's share of ownership.

(d) Give reasonable advance notice of the referendum:

(1) By utilizing available media or public information sources without advertising expense (including but not limited to, press and radio facilities) announcing the dates, places, or methods of voting, eligibility requirements, and other pertinent information, and

(2) By such other means as said agent may deem advisable.

(e) Make available to eligible producers and importers the instructions on voting, appropriate ballot and certification forms, and, except in the case of a referendum on the termination or continuance of an order, a summary of the terms and conditions of the order: *Provided*, That no person who claims to be eligible to vote shall be refused a ballot.

(f) If ballots are to be cast by mail, cause all the material specified in paragraph (e) of this section to be mailed to each eligible producer and importer whose name and address is known to the referendum agent.

(g) If ballots are to be cast at polling places or meetings, determine the necessary number of polling or meeting places, designate them, announce the time of each meeting or the hours during which each polling place will be open, provide the material specified in paragraph (e) of this section, and provide for appropriate custody of ballot forms and delivery to the referendum agent of ballot cast.

(h) At the conclusion of the referendum, canvass the ballots, tabulate the results, and except as otherwise directed, report the outcome to the Administrator and promptly thereafter submit the following:

(1) All ballots received by the agent and appointees, together with a certificate to the effect that the ballots forwarded are all of the ballots cast and received by such persons during the referendum period;

(2) A list of all challenged ballots deemed to be invalid; and

(3) A tabulation of the results of the referendum and a report thereon, including a detailed statement explaining the method used in giving publicity to the referendum and showing other information pertinent to the manner in which the referendum was conducted.

§ 1240.204 Subagents.

The referendum agent may appoint any person or persons deemed necessary or desirable to assist said agent in performing his or her functions hereunder. Each person so appointed may be authorized by said agent to perform, in accordance with the requirements herein set forth, any or all of the following functions (which, in the absence of such appointment, shall be performed by said agent):

(a) Give public notice of the referendum in the manner specified herein;

(b) Preside at a meeting where ballots are to be cast or as poll officer at a polling place;

(c) Distribute ballots and the aforesaid texts to producers and importers and receive any ballots which are cast; and

(d) Record the name and address of each person receiving a ballot from, or casting a ballot with, said subagent and inquire into the eligibility of such person to vote in the referendum.

§ 1240.205 Ballots.

The referendum agent and his or her appointees shall accept all ballots cast; but, should they, or any of them, deem that a ballot should be challenged for any reason, said agent or appointee shall endorse above his or her signature, on said ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefor, the results of any investigations made with respect thereto, and the disposition thereof. Ballots invalid under this subpart shall not be counted.

§ 1240.206 Referendum report.

Except as otherwise directed, the Administrator shall prepare and submit to the Secretary a report on results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to analysis of the referendum and its results.

§ 1240.207 Confidential information.

All ballots cast and the contents thereof (whether or not relating to the identity of any person who voted or the manner in which any person voted) and all information furnished to, compiled by, or in possession of, the referendum agent shall be treated as confidential.

Subpart—Rules of Practice Governing Proceedings on Petitions to Modify or To Be Exempted From the Honey Research, Promotion, and Consumer Information Order

AUTHORITY: Pub. L. 98-590, 7 U.S.C. 4601-4612.

SOURCE: 51 FR 17919, May 16, 1986, unless otherwise noted.

§ 1240.250 Words in the singular form.

Words in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 1240.251 Definitions.

As used in this subpart, the terms as defined in the Act shall apply with equal force and effect. In addition unless the context otherwise requires:

(a) The term "Act" means the Honey Research, Promotion, and Consumer Information Act, Pub. L. 98-590, 98th Congress, approved October 30, 1984, 7 U.S.C. 4601-4612;

(b) The term "Department" means the U.S. Department of Agriculture;

(c) The term "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereinafter be delegated, to act in the Secretary's stead;

(d) The term "judge" means any Administrative Law Judge in the Office of Administrative Law Judges, U.S. Department of Agriculture;

(e) The term "Administrator" means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated, or may hereafter be delegated, to act in the Administrator's stead;

(f) The term "order" means any order or any amendment thereto which may be issued pursuant to the Act;

(g) The term "person" means any individual, group of individuals, partnership, corporation, association, cooperative, or other entity subject to an order or to whom an order is sought to be made applicable, or on whom an obligation has been imposed or is sought to be imposed under an order;

(h) The term "proceeding" means a proceeding before the Secretary arising under section 10 of the Act;

(i) The term "hearing" means that part of the proceeding which involves the submission of evidence;

(j) The term "party" includes the Department;

(k) The term "hearing clerk" means the Hearing Clerk, U.S. Department of Agriculture, Washington, DC;

(l) The term "decision" means the judge's report to the Secretary and includes the judge's proposed:

(1) Findings of fact and conclusions with respect to all material issues of fact, law or discretion, as well as the reasons or basis therefor,

(2) Order, and

(3) Rulings on findings, conclusions, and orders submitted by the parties; and

(m) The term "petition" includes an amended petition.

§ 1240.252 Institution of proceeding.

(a) *Filing and service of petitions.* Any person subject to an order desiring to complain that any order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law, shall file with the hearing clerk, in quintuplicate, a petition in writing addressed to the Secretary. Promptly upon receipt of the petition, the hearing clerk shall transmit a true copy thereof to the Administrator and the General Counsel, respectively.

(b) *Contents of petitions.* A petition shall contain:

(1) The correct name, address, and principal place of business of the petitioner. If the petitioner is a corporation, such fact shall be stated, together with the name of the State of incorporation, the date of incorporation, and the names, addresses, and respective positions held by its officers and directors; if an unincorporated association, the names and addresses of its officers, and the respective positions held by them; if a partnership; the name and address of each partner;

(2) Reference to the specific terms or provisions of the order, or the interpretation or application thereof, which are complained of;

(3) A full statement of the facts (avoiding a mere repetition of detailed evidence) upon which the petition is based, and which it is desired that the Secretary consider, setting forth clearly and concisely the nature of the petitioner's business and the manner in which petitioner claims to be affected by the terms or provisions of the order or the interpretation or application thereof, which are complained of;

(4) A statement of the grounds on which the terms or provisions of the order, or the interpretation or application thereof, which are complained of, are challenged as not in accordance with law; and

(5) Requests for the specific relief which the petitioner desires the Secretary to grant.

(c) *A motion to dismiss petition*—(1) *Filing, contents, and responses thereto.* If the Administrator is of the opinion that the petition, or any portion thereof, does not substantially comply, in form or content, with the Act or with requirements of paragraph (b) of this section, the Admininstrator may, within 30 days after the filing of the petition, file with the hearing clerk a motion to dismiss the petition, or any portion thereof, on one or more of the grounds stated in this paragraph. Such motion shall specify the grounds of objection to the petition and if based, in whole or in part, on allegations of fact not appearing on the face of the petition, shall be accompanied by appropriate affidavits or documentary evidence substantiating such allegations of fact. The motion may be accompained by a memorandum of law. Upon receipt of such motion, the hearing clerk shall cause a copy thereof to be served upon the petitioner, together with a notice stating that all papers to be submitted in opposition to such motion, including any memorandum of law, must be filed by the petitioner with the hearing clerk not later than 20 days after the service of such notice upon the petitioner. Upon the expiration of the time specified in such notice, or upon receipt of such papers from the petitioner, the hearing clerk shall transmit all papers which have been filed in connection with the motion to the judge for his/her consideration.

(d) *Further proceedings.* Further proceedings on petitions to modify or to be exempted from the order shall be governed by §§ 900.52(c)(2) through 900.71 of this title (Rules of Practice Governing Proceedings on Petitions to Modify or to be Exempted From Marketing Orders) and as may hereafter be amended, and the same are incorporated herein and made a part hereof by reference. However, each reference to "marketing order" in the title shall mean "order".

PART 1250—EGG RESEARCH AND PROMOTION

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AUTHORITY: Pub. L. 93-428, 88 Stat. 1171, as amended; 7 U.S.C. 2701-2718.

Subpart—Procedure for the Conduct of Referenda in Connection With Egg Research and Promotion Order

SOURCE: 40 FR 48496, Oct. 16, 1975, unless otherwise noted.

§ 1250.200 Referenda.

Referenda for the purpose of ascertaining whether the issuance by the Secretary of Agriculture of an Egg Research and Promotion Order, or the continuance, termination, or suspension of such an order, is approved or favored by producers, shall unless supplemented or modified by the Secretary, be conducted in accordance with this subpart.

§ 1250.201 Definitions.

(a) "Act" means the Egg Research and Consumer Information Act and as it may be amended (Pub. L. 93-428, 7 U.S.C. 2701 et seq.).

(b) "Secretary" means the Secretary of Agriculture or any other officer or employee of the Department of Agriculture to whom there has heretofore been delegated, or to whom there may hereafter be delegated, the authority to act in his stead; and "Department of Agriculture" means the United States Department of Agriculture.

(c) "Administrator" means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any other officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in his stead.

(d) "Order" means the order or any amendment thereto promulgated pursuant to the act with respect to which the Secretary has directed that a referendum be conducted.

(e) "Referendum agent" means the individual or individuals designated by the Secretary to conduct the referendum.

(f) "Representative period" means the period designated by the Secretary pursuant to section 9 of the act (7 U.S.C. 2708).

(g) "Person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity.

(h) "Egg producer" or "producer" means any person who either: (1) Is an egg farmer who acquires and owns laying hens, chicks, and/or started pullets for the purpose of and is engaged in the production of commercial eggs; or (2) is a person who supplied or supplies laying hens, chicks, and/or started pullets to an egg farmer for the purpose of producing commercial eggs pursuant to an oral or written contractual agreement for the production of commercial eggs. Such person is deemed to be the owner of such laying hens UNLESS it is established in writing, to the satisfaction of the Secretary or the Egg Board, that actual ownership of the laying hens is in some other party to the contract. In the event the party to an oral contract who supplied or supplies the laying hens cannot be readily identified by the Secretary or the Egg Board, the person who has immediate possession and control over the laying hens at the egg production facility shall be deemed to be the owner of such hens unless written notice is provided to the Secretary or the Egg Board, signed by the parties to said oral contract, clearly stating that the eggs are being produced under a contractual agreement and identifying the party (or parties) under said contract who is the owner of the hens.

§ 1250.202 Voting.

(a) Each person who is a producer, as defined in this subpart, at the time of the referendum, who was engaged in the production of commercial eggs during the representative period, and who is not exempt from the provisions of the order as provided for in § 1250.348 thereof, shall be entitled to only one vote in the referendum.

(b) Proxy voting is not authorized, but an officer or employee of a corporate producer, or an administrator, executor, or trustee of a producing estate, or an authorized representative of any other entity may cast a ballot on behalf of such producer or estate. Any individual so voting in a referendum shall certify that he is an officer or employee of the corporate producer, or an administrator, executor, or trustee of the producing estate, or an authorized representative of such other entity, and that he has the authority to take such action. Upon request of the referendum agent, such individual shall submit adequate evidence of his authority.

(c) Each producer shall be entitled to cast only one ballot in the referendum.

[40 FR 48496, Oct. 16, 1975; 40 FR 59190, Dec. 22, 1975, as amended at 55 FR 6973, Feb. 28, 1990]

§ 1250.203 Instructions.

The referendum agent shall conduct the referendum, in the manner herein provided, under supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the time of commencement and termination of the period of the referendum, and the time when all ballots must be received by the referendum agent.

(b) Determine whether ballots may be cast by mail, at polling places, at meetings of producers, or by any combination of the foregoing.

(c) Provide ballots and related material to be used in the referendum. Ballot material shall provide for recording essential information for ascertaining (1) whether the person voting, or on whose behalf the vote is cast, is an eligible voter, and (2) the total volume of commercial eggs produced during the representative period.

(d) Give reasonable advance notice of the referendum (1) by utilizing, without advertising expense, available media of public information (including, but not limited to, press and radio facilities) serving the production area(s), announcing the dates, places, and method(s) of voting, eligibility requirements, and other pertinent information, and (2) by such other means as said agent may deem advisable.

(e) Make available to producers instructions on voting, appropriate registration, ballot, and certification forms, and, except in the case of a referendum on the termination or continuance of an order, a summary of the terms and conditions of the order: *Provided*, That no person who claims to be qualified to vote shall be refused a ballot.

(f) If the ballots are to be cast by mail, cause all the material specified in paragraph (e) of this section to be mailed to each eligible producer whose name and address are known to the Secretary or the referendum agent.

(g) If the ballots are to be cast at polling places or meetings, determine the necessary number of polling or meeting places, designate them, announce the time of each meeting or the hours during which each polling place will be open, provide the material specified in paragraph (e) of this section, and provide for appropriate custody of ballot forms and delivery to the referendum agent of ballots cast.

(h) At the conclusion of the referendum, canvass the ballots, tabulate the results, and except as otherwise directed report the outcome to the Administrator and promptly thereafter submit the following:

(1) All ballots received by the agent and appointees, together with a certificate to the effect that the ballots listed are all of the ballots cast and received by the agent and appointees during the referendum period;

(2) A tabulation of all challenged ballots deemed to be invalid; and

(3) A report of the referendum including a detailed statement explaining the method used in giving publicity to the referendum and showing other information pertinent to the manner in which the referendum was conducted.

§ 1250.204 Subagents.

The referendum agent may appoint any person or persons deemed necessary or desirable to assist said agent in performing his functions hereunder. Each person so appointed may be authorized by said agent to perform, in accordance with the requirements herein set forth, any or all of the following functions (which, in the absence of such appointment, shall be performed by said agent):

(a) Give public notice of the referendum in the manner specified herein;

(b) Preside at a meeting where ballots are to be cast or as poll officer at a polling place;

(c) See the ballots and the aforesaid texts are distributed to producers and receive any ballots which are cast; and

(d) Record the name and address of each person casting a ballot with said subagent and inquire, as deemed appropriate into the eligibility of such persons to vote in the referendum.

§ 1250.205 Ballots.

The referendum agent and his appointees shall accept all ballots cast; but should they, or any of them, deem that a ballot should be challenged for any reason, said agent or appointee shall endorse above his signature, on said ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefor, the results of any investigations made with respect thereto, and the disposition thereof. Invalid ballots shall not be counted.

§ 1250.206 Referendum report.

Except as otherwise directed, the Administrator shall prepare and submit to the Secretary a report on results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to analysis of the referendum and its results.

§ 1250.207 Confidential information.

The ballots cast or the manner in which any person voted and all information furnished to, compiled by, or in the possession of the referendum agent shall be regarded as confidential.

Subpart—Rules of Practice Governing Proceedings on Petitions to Modify or To Be Exempted From Orders

SOURCE: 40 FR 48497, Oct. 16, 1975, unless otherwise noted.

§ 1250.250 Words in the singular form.

Words in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 1250.251 Definitions.

As used in this subpart, the terms as defined in the act shall apply with equal force and effect. In addition, unless the context otherwise requires:

(a) The term "act" means the Egg Research and Consumer Information Act and as it may be amended (Pub. L. 93-428, 7 U.S.C. 2701 et seq.);

(b) The term "Department" means the U.S. Department of Agriculture;

(c) The term "Secretary" means the Secretary of Agriculture or any other officer or employee of the Department of Agriculture to whom there has heretofore been delegated, or to whom there may hereinafter be delegated, the authority to act in his stead;

(d) The term "Administrative Law Judge" or "Judge" means any Administrative Law Judge appointed pursuant to 5 U.S.C. 3105 and assigned to conduct the hearing;

(e) The term "Administrator" means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any other officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in his stead;

(f) The term FEDERAL REGISTER means the publication provided for by the act of July 26, 1935 (49 Stat. 500), and acts supplementary thereto and amendatory thereof;

(g) The term "order" means any order or any amendment thereto which may be issued pursuant to the act;

(h) The term "person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity, subject to an order or to whom an order is sought to be made applicable, or on whom an obligation has been imposed or is sought to be imposed under an order;

(i) The term "proceeding" means a proceeding before the Secretary arising under section 14(a) of the act;

(j) The term "hearing" means that part of the proceeding which involves the submission of evidence;

(k) The term "party" includes the Department;

(l) The term "Hearing Clerk" means the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C.;

(m) The term "Administrative Law Judge's report" means the Administrative Law Judge's report to the Secretary and includes the Administrative Law Judge's proposed (1) findings of fact and conclusions with respect to all material issues of fact, law, or discretion, as well as the reasons or basis therefor, (2) order, and (3) rulings on findings, conclusions, and orders submitted by the parties; and

(n) The term "petition" includes an amended petition.

§ 1250.252 Institution of proceeding.

(a) *Filing and service of petition.* Any person subject to an order desiring to complain that any order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with the law, shall file with the Hearing Clerk, in quadruplicate, a petition in writing addressed to the Secretary. Promptly upon receipt of the petition, the Hearing Clerk shall transmit a true copy thereof to the Administrator and the General Counsel, respectively.

(b) *Contents of petition.* A petition shall contain:

(1) The correct name, address, and principal place of business of the petitioner. If petitioner is a corporation, such fact shall be stated, together with the name of the State of incorporation, the date of incorporation, and the names, addresses, and respective positions held by its officers and directors; if an unincorporated association, the names and addresses of its officers, and the respective positions held by them, if a partnership, the name and address of each partner;

(2) Reference to the specific terms and provisions of the order, or the interpretation or application thereof, which are complained of;

(3) A full statement of the facts (avoiding a mere repetition of detailed evidence) upon which the petition is based, and which it is desired that the Secretary consider, setting forth clearly and concisely the nature of the petitioner's business and the manner in which petitioner claims to be affected by the terms or provisions of the order or the interpretation or application thereof, which are complained of;

(4) A statement of the grounds on which the terms or provisions of the order, or the interpretation or application thereof, which are complained of, are challenged as not in accordance with law;

(5) Prayers for the specific relief which the petitioner desires the Secretary to grant; and

(6) An affidavit by the petitioner, or if the petitioner is not an individual, by an officer of the petitioner having knowledge of the facts stated in the petition, verifying the petition.

(c) *Application to dismiss petition.* (1) If the Administrator is of the opinion that the petition, or any portion thereof, does not substantially comply, in form or content, with the act or with the requirements of paragraph (b) of this section, he may, within 30 calendar days after the filing of the petition, file with the Hearing Clerk an application to dismiss the petition, or any portion thereof, on one or more of the grounds stated in this section. Such application shall specify the grounds of objection to the petition and if based, in whole or in part, on allegations of fact not appearing on the face of the petition, shall be accompanied by appropriate affidavits or documentary evidence substantiating such allegations of fact. The application may be accompanied by a memorandum of law. Upon receipt of such application, the Hearing Clerk shall cause a copy thereof to be served upon the petitioner, together with a notice stating that all papers to be submitted in opposition to such application, including any memorandum of law, must be filed by the petitioner with the Hearing Clerk not later than 20 calendar days after the service of such notice upon the petitioner. Upon the expiration of the time specified in such notice, or upon receipt of such papers from the petitioner, the Hearing Clerk shall transmit all papers which have been filed in connection with the application to the Judge for his consideration.

(2) *Decision by Administrative Law Judge.* The Judge, after due consideration, shall render a decision upon the motion stating the reasons for his action. Such decision shall be in the form of an order and shall be filed with the Hearing Clerk who shall cause a copy thereof to be served upon the petitioner and a copy thereof to be transmitted to the Administrator. Any such order shall be final unless appealed pursuant to § 900.65, incorporated by paragraph (d) of this section: *Provided,* That within 20 calendar days following the service upon the petitioner of a copy of the order of the Judge dismissing the petition, or any portion thereof, on the grounds that it does not substantially comply in form and content with the act or paragraph (b) of this section, the petitioner shall be permitted to file an amended petition.

(3) *Oral argument.* Unless a written application for oral argument is filed by a party with the Hearing Clerk not later than the time fixed for filing

papers in opposition to the motion, it shall be considered that the party does not desire oral argument. The granting of a request to make oral argument shall rest in the discretion of the Judge.

(d) *Further proceedings.* Further proceedings on petitions to modify or to be exempted from orders shall be governed by § 900.52a through § 900.71 excluding § 900.70 of the title "Rules of Practice Governing Proceedings on Petitions to Modify or To Be Exempted From Marketing Orders" revised October 29, 1973, and any amendments thereto, except that all references to marketing orders shall mean orders under the act, and as may hereafter be amended, and the same are incorporated herein and made a part hereof by reference.

Subpart—Egg Research and Promotion Order

SOURCE: 40 FR 59190, Dec. 22, 1975, unless otherwise noted.

DEFINITIONS

§ 1250.301 Secretary.

"Secretary" means the Secretary of Agriculture or any other officer or employee of the Department of Agriculture to whom there has heretofore been delegated, or to whom there may hereafter be delegated, the authority to act in his stead.

§ 1250.302 Act.

"Act" means the Egg Research and Consumer Information Act and as it may be amended (Pub. L. 93-428).

§ 1250.303 Fiscal period.

"Fiscal period" means the calendar year unless the Egg Board, with the approval of the Secretary, selects some other budgetary period.

§ 1250.304 Egg Board or Board.

"Egg Board" or "Board" or other designatory term adopted by such Board, with the approval of the Secretary, means the administrative body established pursuant to § 1250.326.

§ 1250.305 Egg producer or producer.

"Egg producer" or "producer" means any person who either:

(a) Is an egg farmer who acquires and owns laying hens, chicks, and/or started pullets for the purpose of and is engaged in the production of commercial eggs; or

(b) Is a person who supplied or supplies laying hens, chicks, and/or started pullets to an egg farmer for the purpose of producing commercial eggs pursuant to an oral or written contractual argeement for the production of commercial eggs. Such person is deemed to be the owner of such laying hens unless it is established in writing, to the satisfaction of the Secretary or the Egg Board, that actual ownership of the laying hens is in some other party to the contract. In the event the party to an oral contract who supplied or supplies the laying hens cannot be readily identified by the Secretary or the Egg Board, the person who has immediate possession and control over the laying hens at the egg production facility shall be deemed to be the owner of such hens unless written notice is provided to the Secretary or the Egg Board, signed by the parties to said oral contract, clearly stating that the eggs are being produced under a contractual agreement and identifying the party (or parties) under said contract who is the owner of the hens.

§ 1250.306 Commercial eggs or eggs.

"Commercial eggs" or "eggs" means eggs from domesticated chickens which are sold for human consumption either in shell egg form or for further processing into egg products.

§ 1250.307 Person.

"Person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity.

§ 1250.308 United States.

"United States" means the 48 contiguous States of the United States of America and the District of Columbia.

§ 1250.309 Handler.

"Handler" means any person who receives or otherwise acquires eggs from an egg producer, and processes, prepares for marketing, or markets, such eggs, including eggs of his own production.

§ 1250.310 Promotion.

"Promotion" means any action, including paid advertising, to advance the image or desirability of eggs, egg products, spent fowl, or products of spent fowl.

§ 1250.311 Research.

"Research" means any type of research to advance the image, desirability, marketability, production, or quality of eggs, egg products, spent fowl, or products of spent fowl, or the evaluation of such research.

§ 1250.312 Marketing.

"Marketing" means the sale or other disposition of commercial eggs, egg products, spent fowl, or products of spent fowl in any channel of commerce.

§ 1250.313 Eligible organization.

"Eligible organization" means any organization, association, or cooperative which represents egg producers of any egg producing area of the United States certified by the Secretary pursuant to § 1250.356.

§ 1250.314 Plans and projects.

"Plans" and "projects" means those research, consumer and producer education, advertising, marketing, product development, and promotion plans, studies, or projects pursuant to § 1250.341.

§ 1250.315 Part and subpart.

"Part" means the Egg Research and Promotion Order and all rules, regulations, and supplemental order issued pursuant to the act and the order. "Subpart" refers to the aforesaid order or any other portion or segment of this part.

§ 1250.316 Representative of a producer.

"Representative of a producer" means the owner, officer, or an employee of a producer who has been duly authorized to act in the place and stead of the producer.

Egg Board

§ 1250.326 Establishment and membership.

There is hereby established an Egg Board, hereinafter called the "Board," composed of 18 egg producers or representatives of egg producers, and 18 specific alternates, all appointed by the Secretary from nominations submitted by eligible organizations, associations, or cooperatives, or by other producers pursuant to § 1250.328.

§ 1250.327 Term of office.

The members of the Board, and their alternates, shall serve for terms of 2 years, except initial appointments shall be, proportionately, for terms of 2 and 3 years. Each member and alternate member shall continue to serve until his successor is appointed by the Secretary and has qualified. No member shall serve for more than three consecutive terms.

§ 1250.328 Nominations.

All nominations authorized under § 1250.326 shall be made in the following manner:

(a) Within 30 days of the approval of this order by referendum, nominations shall be submitted to the Secretary for each geographic area as specified in paragraph (d) of this section by eligible organizations, associations, or cooperatives certified pursuant to § 1250.356, or, if the Secretary determines that a substantial number of egg producers are not members of, or their interests are not represented by, any such eligible organization, association, or cooperative, then from nominations made by such egg producers in the manner authorized by the Secretary;

(b) After the establishment of the initial Board, the nominations for subsequent Board members and alternates shall be submitted to the Secretary not less than 60 days prior to the expiration of the terms of the members and alternates previously appointed to the Board;

(c) Where there is more than one eligible organization, association, or cooperative within each geographic area, as defined by the Secretary, they may caucus for the purpose of jointly nominating two qualified persons for each member and for each alternate member to be appointed. If joint agreement is not reached with respect to any such nominations, or if no caucus is held within a defined geographic area, each eligible organization, association, or cooperative may submit to the Secretary two nominations for each appointment to be made;

(d) For purposes of nominating members, and their alternates, to the Board, the 48 contiguous States of the United States shall be grouped into 6 geographic areas, as follows: Area 1 (North Atlantic States) consisting of Vermont, New Hampshire, Maine, Massachusetts, Connecticut, Rhode Island, New York, Pennsylvania, New Jersey, Delaware, Maryland, and the District of Columbia; Area 2 (South Atlantic States) consisting of Virginia, West Virginia, North Carolina, South Carolina, Georgia, and Florida; Area 3 (East North Central States) Ohio, Indiana, Illinois, Michigan, and Wisconsin; Area 4 (West North Central States) Minnesota, Iowa, Missouri, North Dakota, South Dakota, Nebraska, and Kansas; Area 5 (South Central States) Kentucky, Tennessee, Alabama, Mississippi, Arkansas, Louisiana, Oklahoma, and Texas; and Area 6 (Western States) Montana, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Idaho, Washington, Oregon, and California. The number of members of the initial Board, and their alternates, who shall be appointed from each area are: Area 1-3, Area 2-4, Area 3-2, Area 4-2, Area 5-4, and Area 6-3, for a total of 18 members from all areas. Changes to the Board as provided in paragraph (e) of this section shall be accomplished by determining the percentage of United States egg production in each area times 18 (total Board membership) and rounding to the nearest whole number; and

(e) After the establishment of the initial Board, the area grouping of the 48 contiguous States of the United States provided for in paragraph (d) of this section, including the area distribution of the 18 members of the Board and their alternates, shall be reviewed at any time not to exceed 5 years by the Board, or by a person or agency designated by the Board to perform such review, and the results shall be reported to the Secretary along with any recommendations by the Board regarding whether the delineation of the areas and the area distribution of the Board should continue without any change, or whether changes should be made in either the areas or the number of Board members to be appointed from each area, providing that each area shall be represented by not less than one Board member and any action recommended shall be subject to the approval of the Secretary.

§ 1250.329 Selection.

From the nominations made pursuant to § 1250.328, the Secretary shall appoint the members of the Board, and an alternate for each such member, on the basis of representations provided for in § 1250.326, § 1250.327, and § 1250.328.

§ 1250.330 Acceptance.

Any person appointed by the Secretary as a member, or as an alternate member, of the Board shall qualify by filing a written acceptance with the Secretary within a period of time prescribed by the Secretary.

§ 1250.331 Vacancies.

To fill any vacancy occasioned by the failure to qualify of any person appointed as a member, or as an alternate member, of the Board, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the Board, a successor for the unexpired term of such member or alternate member of the Board shall be nominated, qualified, and appointed in the manner specified in § 1250.326, § 1250.328(b), § 1250.329, and § 1250.330, except that replacement of a Board member, or alternate, with an unexpired term of less than 6 months is not necessary.

§ 1250.332 Alternate members.

An alternate member of the Board, during the absence of the member for whom he is the alternate, shall act in the place and stead of such member and perform such other duties as assigned. In the event of the death, removal, resignation, or disqualification of a member, his alternate shall act for him until a successor for such member is appointed and qualified.

§ 1250.333 Procedure.

(a) A majority of the members, including alternates acting for members of the Board, shall constitute a quorum, and any action of the Board shall require the concurring votes of at least a majority of those present and voting. At assembled meetings, all votes shall be cast in person.

(b) For routine and noncontroversial matters which do not require deliberation and exchange of views, and in matters of an emergency nature when there is not enough time to call an assembled meeting of the Board, the Board may also take action upon the concurring votes of a majority of its members by mail, telephone, or telegraph, but any such action by telephone shall be confirmed promptly in writing.

§ 1250.334 Compensation and reimbursement.

The members of the Board, and alternates when acting as members, shall serve without compensation but shall be reimbursed for necessary and reasonable expenses, as approved by the Board, incurred by them in the performance of their duties under this subpart.

§ 1250.335 Powers of the Board.

The Board shall have the following powers:

(a) To administer the provisions of this subpart in accordance with its terms and provisions;

(b) To make rules and regulations to effectuate the terms and provisions of this subpart;

(c) To receive, investigate, and report to the Secretary complaints of violations of this subpart; and

(d) To recommend to the Secretary amendments to this subpart.

§ 1250.336 Duties.

The Board shall have the following duties:

(a) To meet and organize and to select from among its members a chairman and such other officers as may be necessary, to select committees and subcommittees of Board members, to adopt such rules for the conduct of its business as it may deem advisable, and it may establish advisory committees of persons other than Board members;

(b) To appoint or employ such persons as it may deem necessary and to define the duties and determine the compensation of each;

(c) To prepare and submit to the Secretary for his approval budgets on a fiscal-period basis of its anticipated expenses and disbursements in the administration of this subpart, including probable cost of plans and projects as estimated in the budget or budgets submitted to it by prospective contractors, with the Board's recommendations with respect thereto;

(d) With the approval of the Secretary, to enter into contracts or agreements with persons, including, but not limited to, State, regional, or national agencies or State, regional, or national egg organizations which administer research, education, or promotion programs, advertising agencies, public relations firms, public or private research organizations, advertising and promotion media, and egg producer organizations, for the development and submission to it of plans and projects authorized by § 1250.341 and for the carrying out of such plans or projects when approved by the Secretary, and for the payment of the cost thereof with funds collected pursuant to § 1250.347. Any such contracts or agreements shall provide that such contractors shall develop and submit to the Board a plan or project together with a budget or budgets which shall show estimated costs to be incurred for such plan or project, and that any such plan or project shall become effective upon approval by the Secretary. Any such contract or agreement shall also provide that the contractor shall keep accurate records of all of its transactions and make periodic reports to the Board of activities carried out and an accounting for funds received and expended, and such other reports as the Secretary may require;

(e) To review and submit to the Secretary any plans or projects which have been developed and submitted to it by the prospective contractor, together with its recommendations with respect to the approval thereof by the Secretary;

(f) To maintain such books and records and prepare and submit such reports from time to time to the Secretary as he may prescribe, and to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it;

(g) To establish, for the period beginning on January 1, 1989, until approval by producer referendum of the amendments to this subpart, as required by the Egg Research and Consumer Information Act Amendments of 1988 [Pub. Law 100-575], an interest bearing escrow account with a bank which is a member of the Federal Reserve System and to deposit into such account an amount equal to the product obtained by multiplying the total amount of assessments collected during such period by 10 percent.

(h) To pay refunds pursuant to §1250.349(b) to producers requesting refunds in a manner consistent with the following conditions:

(1) If the elimination of the refund provision in § 1250.349(a) of this subpart is not approved pursuant to a referendum, any egg producer shall have the right to demand and receive from the Board a one-time refund of assessments collected from such producer and deposited into the escrow account established pursuant to paragraph (g) of this section.

(2) If the amount in the escrow account required to be established by paragraph (g) of this section is not sufficient to refund the total amount of assessments requested by all such egg producers, the Board shall prorate he amount deposited in such account among all such producers who request a refund of assessments paid.

(i) To prepare and make public, at east annually, a report of activities carried out and an accounting for funds received and expended;

(j) To cause its books to be audited by a certified public accountant at least once each fiscal period and at such other times as the Secretary may request, and submit a copy of each such audit to the Secretary;

(k) To give the Secretary the same notice of meetings of the Board as is given to members in order that he or his representative may attend such meetings;

(l) To act as an intermediary between the Secretary and any producer or handler; and

(m) To submit to the Secretary such information pursuant to this subpart as he may request.

[40 FR 59190, Dec. 22, 1975, as amended at 54 FR 99, Jan. 4, 1989, and 54 FR 11493, Mar. 21, 1989; 54 FR 12310, Mar. 24, 1989]

RESEARCH, EDUCATION, AND PROMOTION

§ 1250.341 Research, education, and promotion.

The Board shall develop and submit to the Secretary for approval any programs or projects authorized in this section. Such programs or projects shall provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for advertising, sales promotion, and consumer education with respect to the use of eggs, egg products, spent fowl, and products of spent fowl: *Provided, however,* That any such program or project shall be directed towards increasing the general demand for eggs, egg products, spent fowl, or products of spent fowl;

(b) The establishment and carrying on of research, marketing, and development projects and studies with respect to sale, distribution, marketing, utilization, or production of eggs, egg products, spent fowl, and products of spent fowl, and the creation of new products thereof in accordance with section 7(b) of the act, to the end that the marketing and utilization of eggs, egg products, spent fowl, and products of spent fowl may be encouraged, expanded, improved, or made more acceptable, and the data collected by such activities may be disseminated;

(c) The development and expansion of foreign markets and uses for eggs, egg products, spent fowl, and products of spent fowl;

(d) Each program or project authorized under paragraphs (a), (b), and (c) of this section shall be periodically reviewed or evaluated by the Board to insure that each such program or project contributes to a coordinated national program of research, education, and promotion contributing to the maintenance of markets and for the development of new markets for and of new products from eggs, egg products, spent fowl, and products of spent fowl. If it is found by the Board that any such program or project does not further the national purpose of the act, then the Board shall terminate such program or project; and

(e) No advertising or promotion programs shall use false or unwarranted claims or make any reference to private brand names of eggs, egg products, spent fowl, and products of spent fowl or use unfair or deceptive acts or practices with respect to quality, value, or use of any competing product.

EXPENSES AND ASSESSMENTS

§ 1250.346 Expenses.

The Board is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by the Board for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. The total costs incurred by the Board for a fiscal period in collecting producer assessments and having an administrative staff shall not exceed an amount of the projected total assessments to be collected by the Board for such fiscal period that the Secretary determines to be reasonable. The funds to cover such expenses shall be paid from assessments received pursuant to § 1250.347.

[40 FR 59190, Dec. 22, 1975, as amended at 54 FR 100, Jan. 4, 1989, and 54 FR 11493, Mar. 21, 1989]

§ 1250.347 Assessments.

Each handler designated in § 1250.349 and pursuant to regulations issued by the Board shall collect from each producer, except for those producers specifically exempted in § 1250.348, and shall pay to the Board at such times and in such manner as prescribed by regulations issued by the Board an assessment at the rate of 5 cents per 30-dozen case of eggs, or the equivalent thereof, or such lesser amount set by the Board and approved by the Secretary for such expenses and expenditures, including provisions for a reasonable reserve and those administrative costs incurred by the Department of Agriculture after this subpart is effective, as the Secretary finds are reasonable and likely to be incurred by the Board and the Secretary under this subpart, except that no more than one such assessment shall be made on any case of eggs.

[55 FR 6973, Feb. 28, 1990]

§ 1250.348 Exemptions.

The following shall be exempt from the specific provisions of the Act:

(a) Any egg producer whose aggregate number of laying hens at any time during a 3-consecutive-month period immediately prior to the date assessments are due and payable has not exceeded 30,000 laying hens. The aggregate number of laying hens owned by a trust or similar entity shall be considered ownership by the beneficiaries of the trust or other entity. Ownership of laying hens by an egg producer also shall include the following:

(1) In cases in which the producer is an individual, laying hens owned by such producer or members of such producer's family that are effectively under the control of such producer, as determined by the Secretary;

(2) In cases in which the producer is a general partnership or similar entity, laying hens owned by the entity and all partners or equity participants in the entity; and

(3) In cases in which the producer holds 50 percent or more of the stock or other beneficial interest in a corporation, joint stock company, association, cooperative, limited partnership,

or other similar entity, laying hens owned by the entity. Stock or other beneficial interest in an entity that is held by the following shall be considered as held by the producer:

(i) Members of the producer's family described in paragraph (a)(1);

(ii) A general partnership or similar entity in which the producer is a partner or equity participant;

(iii) The partners or equity participants in an entity of the type described in (a)(3)(ii); or

(iv) A corporation, joint stock company, association, cooperative, limited partnership, or other similar entity in which the producer holds 50 percent or more of the stock or other beneficial interests.

(b) Any egg producer owning a flock of breeding hens whose production of eggs is primarily utilized for the hatching of baby chicks.

(c) In order to qualify for exemption from the provisions of the Act under this section, producers claiming such exemption must comply with § 1250.530 regarding certification of exempt producers and other such regulations as may be prescribed by the Secretary as a condition to exemption from the provisions of the Act under this section.

[55 FR 6973, Feb. 28, 1990]

§ 1250.349 Collecting handlers and collection.

(a) Handlers responsible for collecting the assessment specified in § 1250.347 shall be any one of the following:

(1) The first person to whom eggs are sold, consigned, or delivered by producers and who grades, cartons, breaks, or otherwise performs a function of a handler under § 1250.309,

(2) A producer who grades, cartons, breaks, or otherwise performs a function of a handler under § 1250.309 for eggs of his own production, or

(3) Such other persons as designated by the Board under rules and regulations issued pursuant to this subpart.

(b) Handlers shall collect and remit to the Egg Board all assessments collected in the manner and in the time specified by the Board pursuant to rules and regulations issued by the Board.

(c) Handlers shall maintain such records as the Egg Board may prescribe pursuant to rules and regulations issued by the Board.

(d) The Board with the approval of the Secretary may authorize other organizations or agencies to collect assessments in its behalf.

[40 FR 59190, Dec. 22, 1975. Redesignated at 55 FR 6973, Feb. 28, 1990]

§ 1250.350 Producer refunds.

(a) Except as provided in paragraph (b) of this section, any egg producer against whose eggs any assessment is made under the authority of the Act and collected from such producer and who is not in favor of supporting the programs in this subpart shall have the right to demand and receive from the Board a refund of such assessment upon submission of proof satisfactory to the Board that the producer paid the assessment for which refund is sought. Any such demand shall be made personally by such producer in accordance with regulations and on a form and within a time period prescribed by the Board and approved by the Secretary. However, in no event should such period be more than 90 days after the end of the month in which the assessments are due and collectable. Any such refund shall be made within 60 days after demand is received therefor.

(b) Effective January 1, 1989, producer refunds as provided in paragraph (a) of this section are eliminated. If elimination of the refund provision in paragraph (a) of this section is not approved pursuant to a referendum, any egg producer who is responsible for paying an assessment to the Board, under this subpart, and who is not in favor of supporting the program established under this subpart shall have the right to demand and receive from the Board a refund of such assessment or a prorata share thereof collected from such producer and deposited into an escrow account pursuant to § 1250.336(g) upon submission of proof satisfactory to the Board that the producer paid the assessment for which the refund is sought. Any such demand shall be made by such producer in accordance with regulations and on a form and within a time period prescribed by the Board and approved by the Secretary.

[40 FR 59190, Dec. 22, 1975, as amended at 54 FR 100, Jan. 4, 1989, and 54 FR 11493, Mar. 21, 1989; 54 FR 12310, Mar. 24, 1989. Redesignated at 55 FR 6973, Feb. 28, 1990]

§ 1250.351 Influencing governmental action.

No funds collected by the Board under this subpart shall in any manner be used for the purpose of influencing governmental policy or action except to recommend to the Secretary amendments to this subpart.

[40 FR 59190, Dec. 22, 1975. Redesignated at 55 FR 6973, Feb. 28, 1990]

REPORTS, BOOKS, AND RECORDS

§ 1250.352 Reports.

Each handler subject to this subpart and other persons subject to section 7(c) of the act may be required to report to the Board periodically such information as is required by regulations and will effectuate the purposes of the act, which information may include but not be limited to the following:

(a) Number of cases of eggs handled;

(b) Number of cases of eggs on which an assessment was collected;

(c) Name and address of person from whom any assessment was collected; and

(d) Date collection of assessment was made on each case of eggs handled.

[40 FR 59190, Dec. 22, 1975. Redesignated at 55 FR 6973, Feb. 28, 1990]

§ 1250.353 Books and records.

Each handler subject to this subpart and persons subject to section 7(c) of the act shall maintain and make available for inspection by the Board or the Secretary such books and records as are necessary to carry out the provisions of the subpart and the regulations issued hereunder, including such records as are necessary to verify any reports required. Such records shall be retained for at least 2 years beyond the fiscal period of their applicability.

[40 FR 59190, Dec. 22, 1975. Redesignated at 55 FR 6973, Feb. 28, 1990]

§ 1250.354 Confidential treatment.

(a) All information obtained from such books, records, or reports shall be kept confidential by all officers and employees of the Department of Agriculture and the Board, and only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request of the Secretary, or to which the Secretary or any officer of the United States is a party and involving this subpart. Nothing in this paragraph shall be deemed to prohibit (1) the issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements do not identify the information furnished by any person, (2) the publication, by direction of the Secretary, of general statements relating to refunds made by the Egg Board during any specific period of time, or (3) the publication, by direction of the Secretary, of the name of any person violating this subpart together with a statement of the particular provisions of this subpart violated by such person.

(b) All information with respect to refunds, except as provided in paragraph (a)(2) of this section, made to individual producers shall be kept confidential by all officers and employees of the Department of Agriculture and the Board.

[40 FR 59190, Dec. 22, 1975. Redesignated at 55 FR 6973, Feb. 28, 1990]

CERTIFICATION OF ORGANIZATIONS

§ 1250.356 Certification of organizations.

Any organization may request the Secretary for certification of eligibility to participate in nominating members and alternate members on the Board to represent the geographic area in which the organization represents egg producers. Such eligibility shall be based in addition to other available information upon a factual report submitted by the organization which shall contain information deemed relevant and specified by the Secretary for the making of such determination, including, but not limited to, the following:

(a) Geographic territory covered by the organization's active membership;

(b) Nature and size of the organization's active membership, proportion of total of such active membership accounted for by producers of commercial eggs, a chart showing the egg production by State in which the organization has members, and the volume of commercial eggs produced by the organization's active membership in such State(s);

(c) The extent to which the commercial egg producer membership of such organization is represented in setting the organization's policies;

(d) Evidence of stability and permanency of the organization;

(e) Sources from which the organization's operating funds are derived;

(f) Functions of the organization; and

(g) The organization's ability and willingness to further the aims and objectives of the act.

The primary consideration in determining the eligibility of an organization shall be whether its egg producer membership consists of a substantial number of egg producers who produce a substantial volume of the applicable geographic area's commercial eggs to reasonably warrant its participation in the nomination of members for the Board or to request the issuance of an order. The Secretary shall certify any organization which he finds to be eligible under this section and his determination as to eligibility shall be final.

MISCELLANEOUS

§ 1250.357 Suspension and termination.

(a) The Secretary shall, whenever he finds that this subpart or any provision thereof obstructs or does not tend to effectuate the declared policy of the act, terminate or suspend the operation of this subpart or such provision.

(b) The Secretary may conduct a referendum at any time, and shall hold a referendum on request of 10 percent or more of the number of egg producers voting in the referendum approving this subpart, to determine whether egg producers favor the termination or suspension of this subpart, and the Secretary shall suspend or terminate such subpart at the end of 6 months after he determines that suspension or termination of the subpart is approved or favored by a majority of the egg producers voting in such referendum who, during a representative period determined by the Secretary, have been engaged in the production of commercial eggs, and who produced more than 50 percent of the volume of eggs produced by the egg producers voting in the referendum.

§ 1250.358 Proceedings after termination.

(a) Upon the termination of this subpart the Board shall recommend not more than six of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all the funds and property then in the possession or under control of the Board, including claims for any funds unpaid or property not delivered or any other claim existing at the time of such termination.

(b) The said trustees shall: (1) Continue in such capacity until discharged by the Secretary, (2) carry out the obligations of the Board under any contracts or agreements entered into by it pursuant to § 1250.336, (3) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to such person as the Secretary may direct, and (4) upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the Board or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this subpart shall be subject to the same obligation imposed upon the Board and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be disposed of, to the extent practicable, in the interest of continuing one or more of the research or promotion programs hitherto authorized.

§ 1250.359 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant hereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have risen or which may hereafter arise in connection with any provision of this subpart or any regulation issued thereunder;

(b) Release or extinguish any violation of this subpart or any regulation issued hereunder; or

(c) Affect or impair any rights or remedies of the United States, or of the Secretary, or of any person, with respect to any such violation.

§ 1250.360 Personal liability.

No member or alternate member of the Board shall be held personally responsible either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member or alternate, except for acts of dishonesty, or willful misconduct.

§ 1250.361 Right of the Secretary.

All fiscal matters, programs or projects, rules or regulations, reports, or other substantive action proposed and prepared by the Board shall be submitted to the Secretary for his approval.

§ 1250.362 Amendments.

Amendments to this subpart may be proposed, from time to time, by the Board, or by an organization certified pursuant to section 16 of the act, or by any interested person affected by the provisions of the act, including the Secretary.

§ 1250.363 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart of the applicability thereof to other persons or circumstances shall not be affected thereby.

Subpart—Rules and Regulations

SOURCE: 41 FR 22925, June 8, 1976, unless otherwise noted.

DEFINITIONS

§ 1250.500 Terms defined.

Unless otherwise defined in this subpart, definitions of terms used in this subpart shall be those definitions of terms defined in the Egg Research and Consumer Information Act, hereinafter called the Act, and the Egg Research and Promotion Order, hereinafter called the Order.

(a) *Act.* "Act" means the Egg Research and Consumer Information Act as it may be amended (Pub. L. 93-428).

(b) *Secretary.* "Secretary" means the Secretary of Agriculture or any other officer or employee of the Department of Agriculture to whom there has heretofore been delegated, or to whom there may hereafter be delegated, the authority to act in his stead.

(c) *Egg Board or Board.* "Egg Board" or "Board" or other designatory term adopted by such Board, with the approval of the Secretary, means the administrative body established pursuant to § 1250.326.

(d) *Fiscal period.* "Fiscal period" means the calendar year unless the Egg Board, with the approval of the Secretary, selects some other budgetary period.

(e) *Egg producer or producer.* "Egg producer" or "producer" means any person who either:

(1) Is an egg farmer who acquires and owns laying hens, chicks, and/or started pullets for the purpose of and is engaged in the production of commercial eggs; or

(2) Is a person who supplied or supplies laying hens, chicks, and/or started pullets to an egg farmer for the purpose of producing commercial eggs pursuant to an oral or written contractual agreement for the production of commercial eggs. Such person is deemed to be the owner of such laying

hens unless it is established in writing, to the satisfaction of the Secretary or the Egg Board, that actual ownership of the laying hens is in some other party to the contract. In the event the party to an oral contract who supplied or supplies the laying hens cannot be readily identified by the Secretary or the Egg Board, the person who has immediate possession and control over the laying hens at the egg production facility shall be deemed to be the owner of such hens unless written notice is provided to the Secretary or the Egg Board, signed by the parties to said oral contract, clearly stating that the eggs are being produced under a contractual agreement and identifying the party (or parties) under said contract who is the owner of the hens.

(f) *Commercial eggs or eggs.* "Commercial eggs" or "eggs" means eggs from domesticated chickens which are sold for human consumption either in shell egg form or for further processing into egg products.

(g) *Person.* "Person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity.

(h) *Handle.* "Handle" means to grade, carton, process, transport, purchase, or in any way place eggs or cause eggs to be placed in the current of commerce. Such term shall not include the washing, the packing in cases, or the delivery by the producer of his own nest run eggs.

(i) *Handler.* "Handler" means any person who receives or otherwise acquires eggs from an egg producer, and processes, prepares for marketing, or markets such eggs, including eggs of his own production.

(j) *Egg products.* "Egg products" means products produced, in whole or in part, from eggs.

(k) *Cooperating agency.* "Cooperating agency" means any person with which the Egg Board has entered into an agreement pursuant to § 1250.517(c).

(l) *Case.* "Case" means the standard shipping package containing 30-dozen eggs or the equivalent thereof.

(m) *Plans and projects.* "Plans" and "projects" mean those research, consumer and producer education, advertising, marketing, product development, and promotion plans, studies, or projects pursuant to § 1250.341.

(n) *Representative of a producer.* "Representative of a producer" means the owner, officer, or an employee of a producer who has been duly authorized to act in the place and stead of the producer.

(o) *Hen or laying hen.* "Hen" or "laying hen" means a domesticated female chicken 20 weeks of age or over, raised primarily for the production of commercial eggs.

(p) *Hatching eggs.* "Hatching eggs" means eggs intended for use by hatcheries for the production of baby chicks.

(q) *United States.* "United States" means the 48 contiguous States of the United States of America and the District of Columbia.

(r) *Promotion.* "Promotion" means any action, including paid advertising, to advance the image or desirability of eggs, egg products, spent fowl, or products of spent fowl.

(s) *Research.* "Research" means any type of research to advance the image, desirability, marketability, production, or quality of eggs, egg products, spent fowl, or products of spent fowl, or the evaluation of such research.

(t) *Consumer education.* "Consumer education" means any action to advance the image or desirability of eggs, egg products, spent fowl, or products of spent fowl.

(u) *Marketing.* "Marketing" means the sale or other disposition of commercial eggs, egg products, spent fowl, or products of spent fowl, in any channel of commerce.

(v) *Commerce.* "Commerce" means interstate, foreign, or intrastate commerce.

(w) *Spent fowl.* "Spent fowl" means hens which have been in production of commercial eggs and have been removed from such production for slaughter.

(x) *Products of spent fowl.* "Products of spent fowl" means commercial products produced from spent fowl.

(y) *Started pullet.* "Started pullet" means a hen less than 20 weeks of age.

(z) *Shell egg packer.* "Shell egg packer" means any person grading eggs into their various qualities.

(aa) *Egg breaker.* "Egg breaker" means any person subject to the Egg Products Inspection Act (21 U.S.C. 1031 et seq.) engaged in the breaking of shell eggs or otherwise involved in preparing shell eggs for use as egg products.

(bb) *Nest run eggs.* "Nest run eggs" means eggs which are packed as they come from the production facilities without having been sized and/or candled with the exception that some checks, dirties, or obvious undergrades may have been removed and provided further that the eggs may have been washed.

OMB CONTROL NUMBERS ASSIGNED PURSUANT TO THE PAPERWORK REDUCTION ACT

§ 1250.501 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This section collects and displays the control numbers assigned to information collection requirements by the Office of Management and Budget contained in 7 CFR Part 1250 pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96-511.

(b) *Display.*

7 CFR section where identified and described	Current OMB control number
Sec.:	
1250.523	0581-0098
1250.528	0581-0098
1250.529	0581-0098
1250.530	0581-0098
1250.535	0581-0098

(Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621-1627) and Egg Research and Consumer Information Act, as amended (7 U.S.C. 2701-2718))

[48 FR 56566, Dec. 22, 1983]

GENERAL

§ 1250.505 Communications.

Communications in connection with the Order shall be addressed to the Egg Board at its business address.

§ 1250.506 Policy and objective.

(a) It shall be the policy of the Egg Board to carry out an effective and continuous coordinated program of research, consumer and producer education, advertising, and promotion designed to strengthen the egg industry's position in the marketplace, and maintain and expand domestic and foreign markets and uses for eggs, egg products, spent fowl, and products of spent fowl of the United States.

(b) It shall be the objective of the Egg Board to carry out programs and projects which will provide maximum benefit to the egg industry and no undue preference shall be given to any of the various industry segments.

§ 1250.507 Contracts.

The Egg Board, with the approval of the Secretary, may enter into contracts with persons for the development and submission to it of plans or projects authorized by the Order and for carrying out of such plans or projects. Contractors shall agree to comply with the provisions of the Order, this subpart, and applicable provisions of the U.S. Code relative to contracting with the U.S. Department of Agriculture. Subcontractors who enter into contracts or agreements with a primary contractor and who receive or otherwise utilize funds allocated by the Egg Board shall be subject to the provisions of this subpart.

§ 1250.508 Procedure.

The organization of the Egg Board and the procedure for conducting meetings of the Board shall be in accordance with the By-Laws of the Board.

§ 1250.509 USDA costs.

Pursuant to § 1250.347 of the Order, the Board shall pay those administrative costs incurred by the U.S. Department of Agriculture for the conduct of its duties under the Order as determined periodically by the Secretary. Payment shall be due promptly after the billing for such costs.

§ 1250.510 Determination of Board membership.

Pursuant to § 1250.328 (d) and (e) of the order, Board representation among the 6 geographic areas is reapportioned to reflect a change in the percentage of United States egg production in each area times 18 (total Board membership). The number of members of the Board, and their alternates who shall be appointed from each area, beginning with the 2-year term 1985-86, are: Area 1-3, Area 2-3, Area 3-3, Area 4-2, Area 5-3, and Area 6-4.

[49 FR 24010, June 11, 1984]

Assessments, Collections, and Remittances

§ 1250.514 Levy of assessments.

An assessment of 5 cents per case of commercial eggs is levied on each case of commercial eggs handled for the account of each producer. Each case of commercial eggs shall be subject to assessment only once. Producers meeting the requirements of § 1250.348 are exempt from the provisions of the Act including this section.

[55 FR 6974, Feb. 28, 1990]

§ 1250.515 Reporting period and payment.

(a) For the purpose of the payment of assessments, either a calendar month or a 4-week accounting period shall be considered the reporting period; however, other accounting periods may be used when approved by the Board on an individual basis. Each collecting handler shall register his reporting period with the Board. All changes in reporting periods shall be requested in writing and subject to approval by the Board.

(b) Each producer shall pay the required assessment on his commercial eggs pursuant to § 1250.514 to the collecting handler designated in § 1250.516 on or before the date of final settlement between the producer and the collecting handler for the eggs received by the collecting handler during each reporting period.

§ 1250.516 Collecting handlers and collection.

(a) Handlers responsible for collecting the assessments shall be any of the following:

(1) The first person to whom eggs are sold, consigned, or delivered by producers and who grades, cartons, or breaks such eggs. Such shell egg breaker or egg packer must collect and remit to the Board the assessments on all eggs handled except eggs for which there is a certification of exemption or eggs for which there is a statement indicating that an assessment has already been paid;

(2) A person who buys or receives nest run eggs from a producer and who does not grade, carton, or break such eggs. Such person shall collect the assessment from the producer and remit to the Egg Board on all such eggs, except for which there is a certification of exemption or eggs for which there is a statement indicating that an assessment has already been paid;

(3) Except as otherwise provided in paragraph (a)(4) of this section, a producer who grades, cartons, or breaks eggs of his own production shall be responsible for remitting the assessment to the Board on all eggs produced. This would include the eggs which he grades, cartons, or breaks as well as the nest run eggs which are graded, cartoned, or broken by another handler. Such a producer who remits the assessment on nest run eggs to the Board shall provide the handler specified in paragraph (a) (1) or (2) of this section with a written statement that the assessment has already been paid on the nest run eggs; or

(4) Upon approval of the Board, any person who handles eggs for a producer under a written contract that includes express provisions that said handler will remit the assessment on such eggs to the Board shall be the collecting handler notwithstanding the fact that the producer may have graded, cartoned, or otherwise processed the eggs.

Following are some examples to aid in identification of collecting handlers:

(i) Producer sells, assigns, consigns, or otherwise delivers nest run eggs of his own production to a shell egg packer or breaker for preparation for market—the shell egg packer or breaker is the collecting handler and is responsible for remitting to the Egg Board;

(ii) Producer grades, cartons, breaks, or otherwise prepares for marketing a portion of the eggs of his own production and delivers the remaining portion of his nest run eggs to a shell egg packer or breaker—the producer is the collecting handler and shall remit the assessment on his total production to the Board;

(iii) Producer sells all or a portion of his eggs in nest run form to a handler who is not a shell egg packer or breaker—the handler is responsible for collecting the assessment and remitting it to the Egg Board except for eggs covered by a statement indicating that an assessment has already been paid;

(iv) A shell egg packer or breaker who buys or receives nest run eggs from a handler who is not a shell egg packer or breaker—the handler is the collecting handler and shall remit such assessment to the Board;

(v) A shell egg packer or egg breaker buys nest run or graded eggs including undergrade eggs from another shell egg packer or egg breaker—the first shell egg packer or breaker is the collecting handler and shall remit such assessments to the Board.

(b) In the event of a producer's death, bankruptcy, receivership, or incapacity to act, the representative of the producer or his estate, or the person acting on behalf of creditors, shall be considered the producer of the eggs for the purpose of this subpart.

(c) The collecting handler may collect the assessment directly from the producer or deduct the assessment from the proceeds due or paid to the producer on whose eggs the assessment is made.

[41 FR 22925, June 8, 1976, as amended at 42 FR 60724, Nov. 29, 1977]

§ 1250.517 Remittance to Egg Board.

(a) The collecting handler responsible for remittance of assessments to the Board is not relieved of this obligation as a result of his failure to collect payment of the assessment from the egg producer(s).

(b) Each collecting handler required to remit the assessments on the eggs handled during each reporting period, specified in § 1250.515(a), shall remit the assessments directly to the Egg Board by check, draft, or money order payable to the Egg Board on or before the 15th day after the end of said reporting period together with a report pursuant to § 1250.529. The assessment for each reporting period shall be calculated on the basis of the gross volume of eggs subject to assessment received by the collecting handler during each reporting period.

(c) Remittance through cooperating agency.

(1) In any State or specified geographic area the Egg Board, with the approval of the Secretary, may designate by agreement a cooperating agency to collect the assessments in its behalf. Every collecting handler within such a State or geographic area shall remit the assessments for each reporting period, specified in § 1250.515(a), to the designated cooperating agency by check, draft, or money order payable to said cooperating agency on or before the 15th day after the end of said reporting period together with a report pursuant to § 1250.529.

(2) On or before the 20th day after the end of each reporting period, each designated cooperating agency shall remit to the Egg Board the total amount of all assessments received from collecting handlers for said reporting period together with all collecting handler reports. In addition, each designated cooperating agency shall submit to the Egg Board such information as is required by the designation agreement with the Egg Board.

§ 1250.518 Receipts for payment of assessments.

(a) Each collecting handler shall give each producer whose eggs are subject to assessment a receipt for the commercial eggs handled by said collecting handler showing payment of the assessment. This receipt may be on a separate receipt form or included as part of the invoice or settlement sheet for the eggs, but in either event shall contain the following information:

(1) Name, address, and identification number of the collecting handler;

(2) Name and address of the producer who paid the assessment;

(3) Number of cases of eggs on which assessment was paid and the total amount of the assessment; and

(4) Date on which assessment was paid by producer.

(b) All eggs sold, consigned, or delivered from a collecting handler to another handler, excluding cartoned eggs and loose graded eggs sold to the bakeries, restaurants, and institutions, shall be accompanied with the collecting handler's written statement that the assessment on the lot of eggs covered by the invoice has been paid or that lot of eggs or portion thereof is exempt from assessment under provisions of § 1250.514.

REFUNDS

§ 1250.523 Procedure for obtaining refunds.

Except as provided in paragraph (d) of this section, each egg producer against whose eggs an assessment was levied and collected may obtain a refund of the assessment amount for any calendar month in the following manner:

(a) Every refund request must be made by submitting to the Egg Board a completed Egg Board refund application form. The refund application form shall be obtained by written request to the Egg Board and shall require the following information:

(1) Producer's name(s) and address(es);

(2) Collecting handler's name(s), address(es), and identification numbers;

(3) Number of cases of eggs on which refund is requested and the total amount of refund requested;

(4) Dates or inclusive dates on which assessments were paid;

(5) The producer's signature or witnessed mark; and

(6) The receipt given to the producer by the collecting handler pursuant to § 1250.518, or a copy thereof, or such other evidence of payment as is satisfactory to the Egg Board.

Separate refund applications must be filed for assessments paid in different calendar months, but only a single refund request should be made for all assessments paid within a single calendar month.

(b) Every refund application must be mailed to the Egg Board within 90 days after the end of the calendar month during which the assessment obligation was due and collectable.

(c) Within 60 days following the date of receipt by the Egg Board of each properly executed refund application, and proof of payment of the assessment, the Egg Board shall remit the refund.

(d) Effective January 1, 1989, producer refunds as provided in paragraphs (a), (b), and (c) of this section are eliminated. If elimination of the refund provision is not approved pursuant to a referendum, as required by the Egg Research and Consumer Information Act Amendments of 1988, any egg producer who is responsible for paying assessments to the Board under this subpart and who is not in favor of supporting the program established under the Order (§ 1250.301 through § 1250.363) shall have the right to demand and receive from the Board a one-time refund of such assessments or a pro rata share thereof collected from such producer and deposited into an interest-bearing escrow account pursuant to § 1250.336(g) of the Order in the following manner:

(1) *Application forms.* Refund application forms shall be provided by the Egg Board.

(2) *Submission of refund application to Egg Board.* Any producer requesting a one-time refund or pro rata share from the interest-bearing escrow account shall mail an application on the prescribed form to the Egg Board. The refund application shall contain the following information:

(i) Producer's name and full mailing address;

(ii) Farm or firm name;

(iii) Assigned identification number;

(iv) Date of application; and

(v) Signature of producer or authorized representative of producer.

(3) *Time limit for submission of refund application to Board.* All refund applications must be mailed to the Board no later than January 2, 1990, which is 90 days following the effective date of this amended subpart. Validation of filing will be the envelope bearing the postmark date in which the application is mailed. No

refund applications will be validated after the 90-day deadline, except that any producer entering the business after that date must submit a refund application within 90 days after first collection or sale of assessable eggs, but in no case after the date of the producer referendum.

(4) *Payment of refund.* If producers voting in a referendum do not favor elimination of the refund provision, the Egg Board shall pay refund requests or a pro rata share thereof within 60 days of the date the referendum results are released by the Secretary.

[41 FR 22925, June 8, 1976; 41 FR 23930, June 14, 1976, as amended by 42 FR 60724, Nov. 29, 1977; 54 FR 38208, Sept. 15, 1989; 54 FR 39077, Sept. 22, 1989]

REGISTRATION, CERTIFICATION AND REPORTS

§ 1250.528 Registration of collecting handlers.

All collecting handlers shall, prior to August 1, 1976, register with the Egg Board by filing a registration statement. Registered collecting handlers will receive an identification number which must appear on all required reports and official communications with the Egg Board. New businesses subject to this subpart beginning after August 1, 1976, shall register with the Egg Board within 30 days following the beginning of operations. The statement of registration shall include:

(a) Name and complete address of the collecting handler;

(b) Name of individual(s) responsible for filing reports with the Egg Board; and

(c) Type of reporting period desired.

§ 1250.529 Reports.

(a) Collecting handler reports.

(1) Each collecting handler shall make reports on forms made available or approved by the Egg Board. Each collecting handler shall prepare a separate report form each reporting period. Each report shall be mailed to the Egg Board within 15 days after the close of the reporting period and shall contain the following information:

(i) Date of report;

(ii) Reporting period covered by the report;

(iii) Name and address of collecting handler and identification number;

(iv) Total number of cases of eggs handled, total number of cases of eggs subject to collection of assessment, total number of cases of eggs exempt under § 1250.514 from collection of assessment, total number of cases of imported eggs handled, and total number of cases of eggs received from another handler and on which an assessment was already collected;

(v) The names and addresses of producers subject to assessment supplying eggs to the handlers and number of cases of eggs received from each producer;

(vi) Total amount of assessment due for eggs handled during the reporting period and remitted with the report; and

(vii) Such other information as may be required by the Board.

(2) Collecting handler reports shall be filed each reporting period following registration until such time as the Egg Board is notified in writing that the collecting handler has ceased to do business. During reporting periods in which the collecting handler does not handle any eggs, his report form shall state "No Eggs Handled."

(b) The Egg Board may require all persons subject to section 7(c) of the Act to make reports as needed for the enforcement and administration of the Order and as approved by the Secretary.

§ 1250.530 Certification of exempt producers.

Egg producers not subject to the provisions of the Act pursuant to section 1250.348 shall file with all handlers to whom they sell eggs a statement certifying their exemption from the provisions of the Act in accordance with the criterion of section 1250.348. Certification shall be made on forms approved and provided by the Egg Board to collecting handlers for use by exempt producers. The certification form shall be filed with each handler within 10 days after the first sale of eggs to such handler after March 1, 1990, and annually thereafter on or before January 1 as long as the producer continues to do business with the handler. A copy of the certificate of exemption shall be forwarded to the Egg Board by the handler within 30 days of receipt. The certification shall list the following:

(a) The name and address of the producer;

(b) Basis for producer exemption according to the requirements of § 1250.348; and

(c) The signature of the producer.

If the exempt producer becomes subject to the provisions of the Act pursuant to the requirements of section 1250.348, that producer shall notify, within 10 days, all handlers with whom he has filed a certificate of exemption.

[55 FR 6974, Feb. 28, 1990]

RECORDS

§ 1250.535 Retention of records.

(a) Each person required to make reports pursuant to this subpart shall maintain and retain for at least 2 years beyond the fiscal period of their applicability:

(1) One copy of each report submitted to the Egg Board;

(2) Records of all exempt producers including certification of exemption as necessary to verify the address of each exempt producer; and

(3) Such other records as are necessary to verify reports submitted to the Egg Board.

(b) Egg producers subject to § 1250.514 shall maintain and retain for at least 2 years beyond the period of their applicability:

(1) Receipts, or copies thereof, for payment of assessments; and

(2) Such records as are necessary to verify monthly levels of egg production.

§ 1250.536 Availability of records.

Each handler and egg producer subject to this subpart and all persons subject to section 7(c) of the Act shall make available for inspection and copying by authorized employees of the Egg Board and/or the Secretary during regular business hours, such information as is appropriate and necessary to verify compliance with this subpart.

§ 1250.537 Confidentiality.

All information obtained by officers and employees of the Department of Agriculture, the Egg Board, or any person under contract by the Egg Board or otherwise acting on behalf of the Egg Board from the books, records, and reports of persons subject to this subpart, and all information with respect to refunds of assessments made to individual producers, shall be kept confidential in the manner and to the extent provided in § 1250.353 of the Order.

PATENTS, COPYRIGHTS, TRADEMARKS, AND INFORMATION

§ 1250.542 Patents, copyrights, trademarks, and information.

Patents, copyrights, trademarks, and information accruing from work pursuant to any plan or project undertaken by any person on behalf of the Egg Board, financed by assessment funds or other revenues of the Egg Board; shall become property of the U.S Government as represented by the Egg Board; and such patents, copyrights, trademarks, and information may be licensed subject to approval by the Secretary of Agriculture. Upon termination of the Order, the Egg Board shall transfer custody of all such patents, copyrights, trademarks, and information to the Secretary of Agriculture pursuant to the procedure provided for in § 1250.358 who shall utilize them in a manner that he determines to be in the best interest of egg producers. Funds generated from the use of patents, copyrights, trademarks, and information by the Egg Board will be considered income subject to the same fiscal, budget, and audit control as the other funds of the Egg Board. Ownership of inventions made by employees of the Board shall be determined in accordance with Executive Order 10096.

[41 FR 22925, June 8, 1976; 41 FR 23930, June 14, 1976]

PERSONAL LIABILITY

§ 1250.547 Personal liability.

No member, alternate member, employee, or agent of the Board in the performance of his duties with the Board shall be held personally responsible either individually or jointly with others, in anyway whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, by such member, alternate member, employee, or agent, except for acts of dishonesty or willful misconduct.

RIGHT OF THE SECRETARY

§ 1250.552 Right of the Secretary.

All fiscal matters, programs or projects, rules or regulations, reports, or other substantive action proposed and prepared by the Board shall be submitted to the Secretary for his approval.

PART 1260—BEEF PROMOTION AND RESEARCH

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AUTHORITY: 7 U.S.C. 2901 *et. seq.*

Subpart A—Beef Promotion and Research Order

SOURCE: 51 FR 26138, July 18, 1986, unless otherwise noted.

DEFINITIONS

§ 1260.101 Department.

"Department" means the United States Department of Agriculture.

§ 1260.102 Secretary.

"Secretary" means the Secretary of Agriculture of the United States or any other officer or employee of the Department to whom there has heretofore been delegated, or to whom there may hereafter be delegated, the authority to act in the Secretary's stead.

§ 1260.103 Board.

"Board" means the Cattlemen's Beef Promotion and Research Board established pursuant to the Act and this subpart.

§ 1260.104 Committee.

"Committee" means the Beef Promotion Operating Committee established pursuant to the Act and this subpart.

§ 1260.105 Person.

"Person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity.

§ 1260.106 Collecting person.

"Collecting person" means the person making payment to a producer for cattle, or any other person who is responsible for collecting and remitting an assessment pursuant to the Act, the order and regulations prescribed by the Board and approved by the Secretary.

§ 1260.107 State.

"State" means each of the 50 States.

§ 1260.108 United States.

"United States" means the 50 States and the District of Columbia.

§ 1260.109 Unit.

"Unit" means each State, group of States or class designation which is represented on the Board.

§ 1260.110 Referendum.

"Referendum" means the referendum to be conducted by the Secretary pursuant to the Act whereby producers and importers shall be given the opportunity to vote to determine whether the continuance of this subpart is favored by a majority of producers and importers voting.

§ 1260.111 Fiscal year.

"Fiscal year" means the calendar year or such other annual period as the Board may determine.

§ 1260.112 Federation.

"Federation" means the Beef Industry Council of the National Live Stock and Meat Board, or any successor organization to the Beef Industry Council, which includes as its State affiliates the qualified State beef councils.

§ 1260.113 Established national nonprofit industry-governed organizations.

"Established national nonprofit industry-governed organizations" means organizations which:

(a) Are nonprofit organizations pursuant to sections 501(c) (3), (5) or (6) of the Internal Revenue Code (26 U.S.C. 501(c) (3), (5) and (6));

(b) Are governed by a board of directors representing the cattle or beef industry on a national basis; and

(c) Were active and ongoing before the enactment of the Act.

§ 1260.114 Eligible organization.

"Eligible organization" means any organization which has been certified by the Secretary pursuant to the Act and this part as being eligible to submit nominations for membership on the Board.

§ 1260.115 Qualified State beef council.

"Qualified State beef council" means a beef promotion entity that is authorized by State statute or a beef promotion entity organized and operating within a State that receives voluntary assessments or contributions; conducts beef promotion, research, and consumer and industry information programs; and that is certified by the Board pursuant to this subpart as the beef promotion entity in such State.

§ 1260.116 Producer.

"Producer" means any person who owns or acquires ownership of cattle; provided, however, that a person shall not be considered a producer within the meaning of this subpart if (a) the person's only share in the proceeds of a sale of cattle or beef is a sales commission, handling fee, or other service fee; or (b) the person (1) acquired ownership of cattle to facilitate the transfer of ownership of such cattle from the seller to a third party, (2) resold such cattle no later than ten (10) days from the date on which the person acquired ownership, and (3) certified, as required by regulations prescribed by the Board and approved by the Secretary, that the requirements of this provision have been satisfied.

§ 1260.117 Importer.

"Importer" means any person who imports cattle, beef, or beef products from outside the United States.

§ 1260.118 Cattle.

"Cattle" means live domesticated bovine animals regardless of age.

§ 1260.119 Beef.

"Beef" means flesh of cattle.

§ 1260.120 Beef products.

"Beef products" means edible products produced in whole or in part from beef, exclusive of milk and products made therefrom.

§ 1260.121 Imported beef or beef products.

"Imported beef or beef products" means products which are imported into the United States which the Secretary determines contain a substantial amount of beef including those products which have been assigned one or more of the following numbers in the Tariff Schedule of the United States: 106.1020, 106.1040, 106.1060, 106.1080, 107.2000, 107.2520, 107.4000, 107.4500, 107.4820, 107.4840, 107.5220, 107.5240, 107.5500, 107.6100, 107.6200, 107.6300.

§ 1260.122 Promotion.

"Promotion" means any action, including paid advertising, to advance the image and desirability of beef and beef products with the express intent of improving the competitive position and stimulating sales of beef and beef products in the marketplace.

§ 1260.123 Research.

"Research" means studies relative to the effectiveness of market development and promotion efforts, studies relating to the nutritional value of beef and beef products, other related food science research, and new product development.

§ 1260.124 Consumer information.

"Consumer information" means nutritional data and other information that will assist consumers and other persons in making evaluations and decisions regarding the purchasing, preparing, and use of beef and beef products.

§ 1260.125 Industry information.

"Industry information" means information and programs that will lead to the development of new markets, marketing strategies, increased efficiency, and activities to enhance the image of the cattle industry.

§ 1260.126 Plans and projects.

"Plans and projects" means promotion, research, consumer information and industry information plans, studies or projects conducted pursuant to this subpart.

§ 1260.127 Marketing.

"Marketing" means the sale or other disposition in commerce of cattle, beef or beef products.

§ 1260.128 Act.

"Act" means the Beef Promotion and Research Act of 1985, Title XVI, Subtitle A of the Food Security Act of 1985, Pub. L. 99-198 and any amendments thereto.

§ 1260.129 Customs Service.

"Customs Service" means the United States Customs Service of the United States Department of the Treasury.

§ 1260.130 Part and subpart.

"Part" means the Beef Promotion and Research Order and all rules and regulations issued pursuant to the Act and the order, and the order itself shall be a "subpart" of such Part.

CATTLEMEN'S BEEF PROMOTION AND RESEARCH BOARD

§ 1260.141 Membership of Board.

(a) For Board nominations and appointments beginning with those in 1990, the United States shall be divided into 41 geographical units and one unit representing importers, and the number of Board members from each unit shall be as follows:

Unit	Cattle and calves [1] (1,000 head)	Directors
1. Alabama	1,800	2
2. Arizona	947	1
3. Arkansas	1,813	2
4. California	4,700	5
5. Colorado	2,750	3
6. Florida	2,028	2
7. Georgia	1,557	2
8. Idaho	1,600	2
9. Illinois	2,083	2
10. Indiana	1,373	1
11. Iowa	4,517	5
12. Kansas	5,740	6
13. Kentucky	2,467	2
14. Louisiana	1,120	1
15. Michigan	1,258	1
16. Minnesota	2,930	3
17. Mississippi	1,371	1
18. Missouri	4,500	5
19. Montana	2,480	2
20. Nebraska	5,667	6
21. Nevada	543	1
22. New Mexico	1,343	1
23. New York	1,632	2
24. North Carolina	875	1
25. North Dakota	1,767	2
26. Ohio	1,793	2
27. Oklahoma	5,100	5
28. Oregon	1,383	1
29. Pennsylvania	1,913	2
30. South Carolina	617	1
31. South Dakota	3,560	4
32. Tennessee	2,333	2
33. Texas	13,533	14
34. Utah	800	1
35. Virginia	1,743	2
36. West Virginia	500	1
37. Wisconsin	4,207	4
38. Wyoming	1,360	1
39. Northwest		2
Washington	1,297	
Alaska	9	
Hawaii	205	
Total	1,511	
40. Northeast		1
Massachusetts	79	
Maine	120	
Vermont	308	
New Hampshire	57	
Total	564	
41. Mid-Atlantic		1
Maryland	326	
Delaware	32	
Rhode Island	7	
Connecticut	80	
New Jersey	82	
District of Columbia	0	
Total	527	
42. Importer	5,934	6

[1] 1987, 1988, and 1989 average.

(b) The Board shall be composed of cattle producers and importers appointed by the Secretary from nominations submitted pursuant to the Act and regulations of this Part. A producer may only be nominated to represent the unit in which that producer is a resident.

(c) At least every three (3) years, and not more than every two (2) years, the Board shall review the geographic distribution of cattle inventories throughout the United States and the volume of imported cattle, beef, and beef products and, if warranted, shall reapportion units and/or modify the number of Board members from units in order to best reflect the geographic distribution of cattle production volume in the United States and the volume of imported cattle, beef, or beef products into the United States.

(d) The Board may recommend to the Secretary a modification in the number of cattle per unit necessary for representation on the Board.

(e) The following formula will be used to determine the number of Board members who shall serve on the Board for each unit:

(1) Each geographic unit or State that includes a total cattle inventory equal to or greater than five hundred thousand (500,000) head of cattle shall be entitled to one representative on the Board;

(2) States which do not have total cattle inventories equal to or greater than five hundred thousand (500,000) head of cattle shall be grouped, to the extent practicable, into geographically contiguous units each of which have a combined total inventory of not less than 500,000 head of cattle and such unit(s) shall be entitled to at least one representative on the Board;

(3) Importers shall be represented by a single unit, with the number of Board members representing such unit based upon a conversion of the total volume of imported cattle, beef or beef products into live animal equivalencies;

(4) Each unit shall be entitled to representation by an additional Board member for each one million (1,000,000) head of cattle within the unit which exceeds the initial five hundred thousand (500,000) head of cattle within the unit qualifying such unit for representation.

(f) In determining the volume of cattle within the units, the Board and the Secretary shall utilize the information received by the Board pursuant to §§ 1260.201 and 1260.202 industry data and data published by the Department.

[51 FR 26138, July 18, 1986, as amended at 55 FR 20445, May 17, 1990]

§ 1260.142 Term of office.

(a) The members of the Board shall serve for terms of three (3) years, except that the members appointed to the initial Board shall serve, proportionately, for terms of 1, 2, and 3 years. To the extent practicable, the terms of Board members from the same unit shall be staggered for the initial Board.

(b) Each member shall continue to serve until a successor is appointed by the Secretary.

(c) No member shall serve more than two consecutive 3-year terms in such capacity.

§ 1260.143 Nominations.

All nominations authorized under this section shall be made in the following manner:

(a) Nominations shall be obtained by the Secretary from eligible organizations. An eligible organization shall only submit nominations for positions on the Board representing units in which such eligible organization can establish that it is certified as an eligible organization to submit nominations for that unit. If the Secretary determines that a unit is not represented by an eligible organization, then the Secretary may solicit nominations from organizations, and producers residing in that unit.

(b) Nominations for representation of the importer unit may be submitted by—(1) Organizations which represent importers of cattle, beef or beef products, as determined by the Secretary, or (2) Individual importers of cattle, beef or beef products. Individual importers submitting nominations for representation of the importer unit must establish to the satisfaction of the Secretary that the persons submitting the nominations are importers of cattle, beef or beef products.

(c) After the establishment of the initial Board, the Department shall announce when a vacancy does or will exist. Nominations for subsequent Board members shall be submitted to the Secretary not less than sixty (60) days prior to the expiration of the terms of the members whose terms are expiring, in the manner as described in this section. In the case of vacancies due to reasons other than the expiration of a term of office, successor Board members shall be appointed pursuant to § 1260.146.

(d) Where there is more than one eligible organization representing producers in a unit, they may caucus and jointly nominate two qualified persons for each position representing that unit on the Board for which a member is to be appointed. If joint agreement is not reached with respect to any such nominations, or if no caucus is held, each eligible organization may submit to the Secretary two nominees for each appointment to be made to represent that unit.

§ 1260.144 Nominee's agreement to serve.

Any producer or importer nominated to serve on the Board shall file with the Secretary at the time of the nomination a written agreement to:

(a) Serve on the Board if appointed; and

(b) Disclose any relationship with any beef promotion entity or with any organization that has or is being considered for a contractual relationship with the Board.

§ 1260.145 Appointment.

(a) From the nominations made pursuant to § 1260.143, the Secretary shall appoint the members of the Board on the basis of representation provided for in § 1260.141.

(b) Producers or importers serving on the Federation Board of Directors shall not be eligible for appointment to serve on the Board for a concurrent term.

§ 1260.146 Vacancies.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Board, the Secretary shall request that nominations for a successor for the vacancy be submitted by the eligible organization(s) representing producers or importers of the unit represented by the vacancy. If no eligible organization(s) represents producers or importers in such unit, then the Secretary shall determine the manner in which nominations for the vacancy are submitted.

§ 1260.147 Procedure.

(a) At a properly convened meeting of the Board, a majority of the members shall constitute a quorum, and any action of the Board at such a meeting shall require the concurring votes of at least a majority of those present at such meeting. The Board shall establish rules concerning timely notice of meetings.

(b) When in the opinion of the chairperson of the Board emergency action is considered necessary, and in lieu of a properly convened meeting, the Board may take action upon the concurring votes of a majority of its members by mail, telephone, or telegraph, but any such action by telephone shall be confirmed promptly in writing. In the event that such action is taken, all members must be notified and provided the opportunity to vote. Any action so taken shall have the same force as though such action had been taken at a regular or special meeting of the Board.

§ 1260.148 Compensation and reimbursement.

The members of the Board shall serve without compensation, but shall be reimbursed for necessary and reasonable expenses incurred by them in the performance of their duties under this subpart.

§ 1260.149 Powers of the Board.

The Board shall have the following powers:

(a) To administer the provisions of this subpart in accordance with its terms and provisions;

(b) To make rules and regulations to effectuate the terms and provisions of this subpart;

(c) To receive or initiate, investigate, and report to the Secretary complaints of violations of the provisions of this subpart;

(d) To adopt such rules for the conduct of its business as it may deem advisable;

(e) To recommend to the Secretary amendments to this subpart; and

(f) With the approval of the Secretary, to invest, pending disbursement pursuant to a plan or project, funds collected through assessments authorized under § 1260.172, in, and only in, obligations of the United States or any agency thereof, in general obligations of any State or any political subdivision thereof, in any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States.

§ 1260.150 Duties of the Board.

The Board shall have the following duties:

(a) To meet not less than annually, and to organize and select from among its members a chairperson, a vice-chairperson and a treasurer and such other officers as may be necessary;

(b) To elect from its members an Executive Committee of no more than 11 and no less than 9 members, whose membership shall, to the extent practicable, reflect the geographic distribution of cattle numbers or their equivalent. The vice-chairperson of the Board shall serve as chairperson of the Executive Committee and the chairperson and the treasurer of the Board shall serve as members of the Executive Committee;

(c) To delegate to the Executive Committee the authority to administer the terms and provisions of this subpart under the direction of the Board and within the policies determined by the Board;

(d) To elect from its members 10 representatives to the Beef Promotion Operating Committee which shall be composed of 10 members from the Board and 10 members elected by the Federation;

(e) To utilize the resources, personnel, and facilities of established national nonprofit industry-governed organizations;

(f) To review and, if approved, submit to the Secretary for approval, budgets prepared by the Beef Promotion Operating Committee on a fiscal period basis of the Committee's anticipated expenses and disbursements in the administration of the Committee's responsibilities, including probable costs of promotion, research, and consumer information and industry information plans or projects, and also including a general description of the proposed promotion, research, consumer information and industry information programs contemplated therein;

(g) To prepare and submit to the Secretary for approval budgets on a fiscal period basis of the Board's overall anticipated expenses and disbursements, including the Committee's anticipated expenses and disbursements, in the administration of this subpart;

(h) To maintain such books and records, which shall be available to the Secretary for inspection and audit, and to prepare and submit such reports from time to time to the Secretary, as the Secretary may prescribe, and to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it;

(i) To establish an interest bearing escrow account with a bank which is a member of the Federal Reserve System and to deposit into such account an amount equal to the product obtained by multiplying the total amount of funds received by the Board during the period prior to the referendum by the greater of:

(1) The average percentage of assessment refunds paid to producers under State beef promotion, research, and consumer information programs financed through producer assessments, as determined by the Board for the year of 1985; or

(2) 15 percent;

(j) To pay refunds to producers requesting refunds in a manner consistent with the following conditions:

(1) If continuation of this subpart is approved pursuant to the referendum, the Board shall continue to place the amounts required under paragraph (i) of this section in the escrow account until all requests for refunds are paid; or

(2) If the continuation of the order is not approved pursuant to the referendum and the amount deposited in the escrow account is less than the amount of refunds requested, the Board shall prorate the amount deposited in such account among all eligible persons who request a refund of assessments paid.

(k) To prepare and make public, at least annually, a report of its activities carried out and an accounting for funds received and expended;

(l) To cause its books to be audited by a certified public accountant at least once each fiscal period and at such other times as the Secretary may request, and submit a copy of each such audit to the Secretary;

(m) To give the Secretary the same notice of meetings of the Board as is given to members in order that the Secretary, or his representative may attend such meetings;

(n) To review applications submitted by State beef promotion organizations pursuant to § 1260.181 and to make determinations with regard to such applications;

(o) To submit to the Secretary such information pursuant to this subpart as may be requested; and

(p) To encourage the coordination of programs of promotion, research, consumer information and industry information designed to strengthen the beef industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for beef and beef products.

§ 1260.151 Expenses.

(a) The Board is authorized to incur such expenses (including provision for a reasonable reserve), as the Secretary finds are reasonable and likely to be incurred by the board for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with this subpart. Administrative expenses incurred by the board shall not exceed 5 percent of the projected revenue of that fiscal period. Expenses authorized in this paragraph shall be paid from assessments collected pursuant to § 1260.172.

(b) The Board shall reimburse the Secretary, from assessments collected pursuant to § 1260.172, for administrative costs incurred by the Department to carry out its responsibilities pursuant to this subpart after the effective date of this subpart.

(c) The Board shall establish an interest bearing escrow account with a bank that is a member of the Federal Reserve System and shall deposit in such account an amount equal to the percentage determined by the Board to be held in reserve for the payment of refunds pursuant to § 1260.173.

(d) Expenditures for the maintenance and expansion of foreign markets for beef and beef products shall be limited to an amount equal to or less than the total amount of assessments paid pursuant to § 1260.172(a).

[51 FR 26138, July 18, 1986, as amended at 53 FR 52631, Dec. 29, 1988 and 54 FR 15918, Apr. 20, 1989]

BEEF PROMOTION OPERATING COMMITTEE

§ 1260.161 Establishment and membership.

(a) There is hereby established a Beef Promotion Operating Committee of 20 members. The Committee shall be composed of 10 Board members elected by the Board and 10 producers elected by the Federation.

(b) Board representation on the Committee shall consist of the chairperson, vice-chairperson and treasurer of the Board, and seven representatives of the Board who will be duly elected by the Board to serve on the Committee. The seven representatives to the Committee elected by the Board shall, to the extent practical, reflect the geographic and unit distribution of cattle numbers, or the equivalent thereof.

(c) Federation representation on the Committee shall consist of the Federation chairperson, vice-chairperson, and eight duly elected producer representatives of the Federation Board of Directors who are members or ex officio members of the Board of Directors of a qualified State beef council. The eight representatives of the Federation elected to serve on the Committee shall, to the extent practical, reflect the geographic distribution of cattle numbers. The Federation shall submit to the Secretary the names of the representatives elected by the Federation to serve on the Committee and the manner in which such election was held and that such representatives are producers and are members or ex officio members of the Board of Directors of a qualified State beef council on the Federation Board of Directors. The prospective Federation representatives shall file with the Secretary a written agreement to serve on the Committee and to disclose any relationship with any beef promotion entity or with any organization that has or is being considered for a contractual relationship with the Board or the Committee. When the Secretary is satisfied that the above conditions are met, the Secretary shall certify such representatives as eligible to serve on the Committee.

§ 1260.162 Term of office.

(a) The members of the Committee shall serve for a term of 1 year.

(b) No member shall serve more than six consecutive terms.

§ 1260.163 Vacancies.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Committee, the Board or the Federation, depending upon which organization is represented by the vacancy, shall submit the name of a successor for the position in the manner utilized to elect representatives pursuant to § 1260.161 (b) and (c) of this section.

§ 1260.164 Procedure.

(a) Attendance of at least 15 members of the Committee shall constitute a quorum at a properly convened meeting of the Committee. Any action of the Committee shall require the concurring votes of at least two-thirds of the members present. The Committee shall establish rules concerning timely notice of meetings.

(b) When in the opinion of the chairperson of the Committee emergency action must be taken before a meeting can be called, the Committee may take action upon the concurring votes of no less than two-thirds of its members by mail, telephone, or telegraph. Action taken by this emergency procedure is valid only if all members are notified and provided the opportunity to vote and any telephone vote is confirmed promptly in writing. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the Committee.

§ 1260.165 Compensation and reimbursement.

The members of the Committee shall serve without compensation but shall be reimbursed for necessary and reasonable expenses incurred by them in the performance of their duties under this subpart.

§ 1260.166 Officers of the Committee.

The following persons shall serve as officers of the Committee:

(a) The chairperson of the Board shall be chairperson of the Committee.

(b) The chairperson of the Federation shall be vice-chairperson of the Committee.

(c) The treasurer of the Board shall be treasurer of the Committee.

(d) The Committee shall elect or appoint such other officers as it may deem necessary.

§ 1260.167 Powers of the Committee.

The Committee shall have the following powers:

(a) To receive and evaluate, or on its own initiative, develop and budget for plans or projects to promote the use of beef and beef products as well as projects for research, consumer information and industry information and to make recommendations to the Secretary regarding such proposals;

(b) To select committees and subcommittees of Committee members, and to adopt such rules for the conduct of its business as it may deem advisable;

(c) To establish committees of persons other than Committee members to advise the Committee and pay the necessary and reasonable expenses and fees of the members of such committees.

§ 1260.168 Duties of the Committee.

The Committee shall have the following duties:

(a) To meet and to organize;

(b) To contract with established national nonprofit industry-governed organizations to implement programs of promotion, research, consumer information and industry information;

(c) To disseminate information to Board members;

(d) To prepare and submit to the Board for approval budgets on a fiscal-period basis of its anticipated expenses and disbursements in the administration of its responsibilities, including probable costs of promotion, research, consumer information and industry information plans or projects, and also including a general description of the proposed promotion, research, consumer information and industry information programs contemplated therein;

(e) To develop and submit to the Secretary for approval promotion, research, consumer information and industry information plans or projects;

(f) With the approval of the Secretary to enter into contracts or agreements with established national nonprofit industry-governed organizations for the implementation and conduct of activities authorized under §§ 1260.167 and 1260.169 and for the payment of the cost of such activities with funds collected through assessments pursuant to § 1260.172. Any such contract or agreement shall provide that:

(1) The contractors shall develop and submit to the Committee a budget or budgets which shall show the estimated cost to be incurred for such activity or project;

(2) Any such plan or project shall become effective upon approval of the Secretary; and

(3) The contracting party shall keep accurate records of all of its transactions and make periodic reports to the Committee or Board of activities conducted and an accounting for funds received and expended, and such other reports as the Secretary, the Committee or the Board may require. The Secretary or agents of the Committee or the Board may audit periodically the records of the contracting party;

(g) To prepare and make public, at least annually, a report of its activities carried out and an accounting for funds received and expended;

(h) To give the Secretary the same notice of meetings of the Committee and its subcommittees and advisory committees in order that the Secretary, or his representative, may attend such meetings;

(i) To submit to the Board and to the Secretary such information pursuant to this subpart as may be requested; and

(j) To encourage the coordination of programs of promotion, research, consumer information and industry information designed to strengthen the cattle industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for beef and beef products.

§ 1260.169 Promotion, research, consumer information and industry information.

The Committee shall receive and evaluate, or on its own initiative, develop and submit to the Secretary for approval any plans and projects for promotion, research, consumer information and industry information authorized by this subpart. Such plans and projects shall provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate plans or projects for promotion, research, consumer information and industry information, with respect to beef and beef products designed to strengthen the beef industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for beef and beef products;

(b) The establishment and conduct of research and studies with respect to the sale, distribution, marketing, and utilization of beef and beef products and the creation of new products thereof, to the end that marketing and utilization of beef and beef products may be encouraged, expanded, improved or made more acceptable in the United States and foreign markets;

(c) Each plan or project authorized under paragraph (a) and (b) of this section shall be periodically reviewed or evaluated by the Committee to ensure that each such plan or project contributes to an effective program of promotion, research, consumer information and industry information. If it is found by the Committee that any such plan or project does not further the purposes of the Act, then the Committee shall terminate such plan or project;

(d) In carrying out any plan or project of promotion or advertising implemented by the Committee, no reference to a brand or trade name of any beef product shall be made without the approval of the Board and the Secretary. No such plans or projects shall make use of any unfair or deceptive acts or practices, including unfair or deceptive acts or practices with respect to the quality, value or use of any competing product; and

(e) No funds collected by the Board under this subpart shall in any manner be used for the purpose of influencing governmental policy or action, except to recommend to the Secretary amendments to this part.

ASSESSMENTS

§ 1260.172 Assessments.

(a) *Domestic assessments.* (1) Except as prescribed by regulations approved by the Secretary, each person making payment to a producer for cattle purchased from such producer shall be a collecting person and shall collect an assessment from the producer, and each producer shall pay such assessment to the collecting person, at the rate of one dollar ($1) per head of cattle purchased and such collecting person shall remit the assessment to the Board or to a qualified State beef council pursuant to § 1260.172(a)(5).

(2) Any producer marketing cattle of that producer's own production in the form of beef or beef products to consumers, either directly or through retail or wholesale outlets, or for export purposes, shall remit to a qualified State beef council or to the Board an assessment on such cattle at the rate of one dollar ($1) per head of cattle or the equivalent thereof.

(3) In determining the assessment due from each producer pursuant to § 1260.172(a) , a producer who is contributing to a qualified State beef council(s) shall receive a credit from the Board for contributions to such Council, but not to exceed 50 cents per head of cattle assessed.

(4) In order for a producer described in § 1260.172(a) to receive the credit authorized in § 1260.172(a)(3), the qualified State beef council or the collecting person must establish to the satisfaction of the Board that the producer has contributed to a qualified State beef council.

(5) Each person responsible for the remittance of the assessment pursuant to § 1260.172 (a) (1) and (2) shall remit the assessment to the qualified State beef council in the State from which the cattle originated prior to sale, or if there is no qualified State beef council within such State, the assessment shall be remitted directly to the Board. However, the Board, with the approval of the Secretary, may authorize qualified State beef councils to propose modifications to the foregoing "State of origin" rule to ensure effective coordination of assessment collections between qualified State beef councils. Qualified State beef councils and the Board shall coordinate assessment collection procedures to ensure that producers selling or marketing cattle in interstate commerce are required to pay only one assessment per individual sale of cattle. For the purpose of this subpart, "State of origin" rule means the State where the cattle were located at time of sale, or the State in which the cattle were located prior to sale if such cattle were transported interstate for the sole purpose of sale. Assessments shall be remitted not later than the 15th day of the month following the month in which the cattle were purchased or marketed.

(6) If a State law or regulation promulgated pursuant to State law requires the payment and collection of a mandatory, nonrefundable assessment of more fifty (50) cents per head on the sale and purchase of cattle, or the equivalent thereof for beef and beef products as described in § 1260.172 (a)(1) and (2) for use by a qualified State beef council to fund activities similar to those described in § 1260.169, and such State law or regulation authorizes the issuance of a credit of that amount of the assessment which exceeds fifty (50) cents to producers who waive any right to the refund of the assessment credited by the State due pursuant to this subpart, then any producer subject to such State law or regulation who pays only the amount due pursuant to such State law or regulation and this subpart, including any credits issued, shall thereby waive that producer's right to receipt from the Board of a refund of such assessment for that portion of such refund for which the producer received credit pursuant to such State law or regulation.

(b) *Importer assessments.* (1) Importers of cattle, beef, and beef products into the United States shall pay an assessment to the Board through the U.S. Customs Service, or in such other manner as may be established by regulations approved by the Secretary.

(2) The assessment rates for imported cattle, beef, and beef products are as follows:

Live Cattle	Assessment
0102.10.00103	$1.00/hd
0102.10.00201	$1.00/hd
0102.10.00309	$1.00/hd
0102.10.00504	$1.00/hd
0102.90.20004	$1.00/hd
0102.90.40206	$1.00/hd
0102.90.40402	$1.00/hd
0102.90.40607	$1.00/hd

Beef and Beef Products	Assessment	
	cents/lb	cents/kg
0201.10.00103	77	1.697542
0201.10.00906	20	0.440920
0201.20.20009	28	0.617288
0201.20.40005	27	0.595242
0201.20.60000	20	0.440920
0201.30.20007	28	0.617288
0201.30.40003	27	0.595242
0201.30.60008	27	0.595242
0202.10.00102	77	1.697542
0202.10.00905	20	0.440920
0202.20.20008	28	0.617288
0202.20.40004	27	0.595242
0202.20.60009	20	0.440920
0202.30.20006	28	0.617288
0202.30.40002	27	0.595242
0202.30.60007	27	0.595242
0206.10.00000	20	0.440920
0206.21.00007	20	0.440920
0206.22.00006	20	0.440920
0206.29.00009	20	0.440920
0210.20.00002	35	0.771610
1601.00.40003	25	0.551150
1601.00.60204	25	0.551150
1602.50.05004	35	0.771610
1602.50.09000	35	0.771610
1602.50.10203	35	0.771610
1602.50.10409	35	0.771610

Beef and Beef Products	Assessment	
	cents/lb	cents/kg
1602 50 20201	37	0.815702
1602 50 20407	37	0.815702
1602 50 60006	38	0.837748

(3) The Board may prescribe by regulation, with the approval of the Secretary, an increase or decrease in the level of assessments for imported beef and beef products based upon revised determinations of live animal equivalencies.

(4) The assessments due upon imported cattle, beef and beef products shall be remitted to the Customs Service upon importation of the cattle, beef or beef products into the United States, or in such other manner as may be provided by regulations prescribed by the Board and approved by the Secretary.

(c) The collection of assessments pursuant to § 1260.172 (a) and (b) shall begin with respect to cattle purchased or cattle, beef, and beef products imported on and after the effective date of this section and shall continue until terminated by the Secretary.

(d) Money remitted pursuant to this subpart shall be in the form of a negotiable instrument made payable as appropriate to the qualified State beef council or the "Cattlemen's Beef Promotion and Research Board." Such remittances and the reports specified in § 1260.201 shall be mailed to the location designated by the Board.

[51 FR 26138, July 18, 1986, as amended at 53 FR 52631, Dec. 29, 1988 and 54 FR 15918, Apr. 20, 1989; 54 FR 28019, July 5, 1989]

§ 1260.173 Refunds.

Any producer of importer from whom an assessment is collected and remitted to the Board, or who pays an assessment directly to the Board, under authority of the Act and this subpart, and who is not in favor of supporting the promotion and research program as provided for in this subpart shall have the right to demand and receive from the Board a refund of such assessment, or a prorata share thereof, upon submission of proof satisfactory to the Board that the producer or importer paid the assessment for which refund is sought. Any such demand shall be made by such producer or importer in accordance with the provisions of this subpart and in a manner consistent with regulations prescribed by the Board and approved by the Secretary.

§ 1260.174 Procedure for obtaining refund.

Each producer or importer who pays an assessment pursuant to the Act and this subpart during the period prior to the referendum may obtain a refund of such assessment only by following the procedures prescribed in this section and any regulations prescribed by the Board and approved by the Secretary.

(a) *Application form.* Board-approved refund application forms may be obtained by written request to a qualified State beef council or the Board.

(b) *Submission of refund application to Board.* Any producer or importer requesting a refund shall mail an application on the prescribed form to a qualified State beef council or the Board within 60 days from the date the assessments were due from such producer or importer. The refund application shall show:

(1) The producer's or importer's name and address;

(2) Collecting person's name and address;

(3) Number of head of cattle, or its equivalent on which a refund is requested;

(4) Total amount of refund requested;

(5) Date or inclusive dates on which assessments were paid;

(6) Certification that the producer or importer did not collect the assessment from another producer or importer; and

(7) The producer's or importer's signature or properly witnessed mark.

(c) *Proof of payment of assessment.* The invoice or accounting given to the producer or importer by the collecting person or a copy thereof, or such other evidence deemed satisfactory by the Board shall accompany the producer's or the importer's refund application.

(d) *Payment of refunds.* The Board shall pay refund requests or a prorata share thereof within 90 days of the date the results of the referendum are released by the Secretary. Refunds shall be paid in a manner consistent with § 1260.150(j).

§ 1260.175 Late-payment charge.

Any unpaid assessments due to the Board pursuant to § 1260.172 shall be increased 2.0 percent each month beginning with the day following the date such assessments were due. Any remaining amount due, which shall include any unpaid charges previously made pursuant to this section, shall be increased at the same rate on the corresponding day of each month thereafter until paid. For the purposes of this section, any assessment that was determined at a date later than prescribed by this subpart because of a person's failure to submit a report to the Board when due shall be considered to have been payable by the date it would have been due if the report had been filed when due. The timeliness of a payment to the Board shall be based on the applicable postmark date or the date actually received by the qualified State beef council or Board, whichever is earlier.

§ 1260.176 Adjustment of accounts.

Whenever the Board or the Department determines that money is due the Board or that money is due any person from the Board, such person shall be notified of the amount due. The person shall then remit any amount due the Board by the next date for remitting assessments as provided in § 1260.172. Overpayments shall be credited to the account of the person remitting the overpayment and shall be applied against amounts due in succeeding months except that the Board shall make prompt payment when an overpayment cannot be adjusted by a credit.

§ 1260.181 Qualified State beef councils.

(a) Any beef promotion entity that is authorized by State statute or is organized and operating within a State, that receives assessments or contributions from producers and conducts beef promotion, research, consumer information and/or industry information programs may apply for certification of qualification so that producers may receive credit pursuant to § 1260.172(a)(3) for contributions to such organization. The Board shall review such applications for certification and shall make a determination as to certification of such applicant.

(b) In order for the State beef council to be certified by the Board as a qualified State beef council, the council must:

(1) Conduct activities as defined in § 1260.169 that are intended to strengthen the beef industry's position in the marketplace;

(2) Submit to the Board a report describing the manner in which assessments are collected and the procedure utilized to ensure that assessments due are paid;

(3) Certify to the Board that such council will collect assessments paid on cattle originating from the State or unit within which the council operates and shall establish procedures for ensuring compliance with this subpart with regard to the payment of such assessments;

(4) Certify to the Board that such organization shall remit to the Board assessments paid and remitted to the council, minus authorized credits issued to producers pursuant to § 1260.172(a)(3), by the last day of the month in which the assessment was remitted to the qualified State beef council unless the Board determines a different date for remittance of assessments.

(5) Councils which are authorized or required to pay refunds to producers must certify to the Board that any requests from producers for refunds from the council for contributions to such council by the producer will be honored by forwarding to the Board that portion of such refunds equal to the amount of credit received by the producer for contributions to the council pursuant to § 1260.172(a)(3);

(6) Certify to the Board that the council will furnish the Board with an annual report by a certified public accountant of all funds remitted to such council pursuant to this subpart and any other reports and information the Board or Secretary may request; and

(7) Not use council funds collected pursuant to this subpart for the purpose of influencing governmental policy or action, or to fund plans or projects which make use of any unfair or deceptive acts or practices including unfair or deceptive acts or practices with respect to the quality, value or use of any competing product.

REPORTS, BOOKS AND RECORDS

§ 1260.201 Reports.

Each importer, person marketing cattle, beef or beef products of that person's own production directly to consumers, and each collecting person making payment to producers and responsible for the collection of the assessment under § 1260.172 shall report to the Board periodically information required by regulations prescribed by the Board and approved by the Secretary. Such information may include but is not limited to the following:

(a) The number of cattle purchased, initially transferred or which, in any other manner, is subject to the collection of assessment, and the dates of such transaction;

(b) The number of cattle imported; or the equivalent thereof of beef or beef products;

(c) The amount of assessment remitted;

(d) The basis, if necessary, to show why the remittance is less than the number of head of cattle multiplied by one dollar; and,

(e) The date any assessment was paid.

EDITORIAL NOTE: The regulations implementing the reporting and recordkeeping provisions contained in § 1260.201 will be submitted for approval to the Office of Management and Budget and will not become effective prior to (OMB) approval.

§ 1260.202 Books and records.

Each person subject to this subpart shall maintain and make available for inspection by the Secretary the records required by regulations prescribed by the Board and approved by the Secretary that are necessary to carry out the provisions of this subpart, including records necessary to verify any required reports. Such records shall be maintained for the period of time prescribed by the regulations issued hereunder.

[51 FR 26138, July 18, 1986; 51 FR 26686, July 25, 1986]

EDITORIAL NOTE: The regulations implementing the reporting and recordkeeping provisions contained in § 1260.202 will be submitted for approval to the Office of Management and Budget and will not become effective prior to (OMB) approval.

§ 1260.203 Confidential treatment.

All information obtained from such books, records or reports required under the Act and this subpart shall be kept confidential by all persons, including employees and agents and former employees and agents of the Board, all officers and employees and all former officers and employees of the Department, and by all officers and employees and all former officers and employees of contracting organizations having access to such information, and shall not be available to Board members or any other producers or importers. Only those persons having a specific need for such information in order to effectively administer the provisions of this subpart shall have access to this information. In addition, only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements do not identify the information furnished by any person; and

(b) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this subpart, together with a statement of the particular provisions of the subpart violated by such person.

[51 FR 26138, July 18, 1986; 51 FR 26686, July 25, 1986]

MISCELLANEOUS

§ 1260.211 Proceedings after termination.

(a) Upon the termination of this subpart the Board shall recommend not more than 11 of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all the funds and property owned, in the possession of or under the control of the Board, including unpaid claims or property not delivered or any other claim existing at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contract or agreements entered into by it pursuant to §§ 1260.150 and 1260.168.

(3) From time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to such persons as the Secretary may direct; and

(4) Upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such persons full title and right to all of the funds, property, and claims vested in the Board or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this subpart shall be subject to the same obligation imposed upon the Board and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be used, to the extent practicable, in the interest of continuing one or more of the promotion, research, consumer information or industry information plans or projects authorized pursuant to this subpart.

[51 FR 26138, July 18, 1986; 51 FR 26686, July 25, 1986]

§ 1260.212 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may hereafter arise in connection with any provision of this subpart or any regulation issued thereunder;

(b) Release or extinguish any violation of this subpart or any regulation issued thereunder; or,

(c) Affect or impair any rights or remedies of the United States, or of the Secretary, or of any person, with respect to any such violation.

§ 1260.213 Removal.

If any person appointed under this Part fails or refuses to perform his or her duties properly or engages in acts of dishonesty or willful misconduct, the Board or Committee may recommend to the Secretary that that person be removed from office. If the Secretary finds that the recommendation demonstrates adequate cause, the Secretary shall remove the person from office. A person appointed or certified under this Part or any employee of the Board or Committee may be removed by the Secretary if the Secretary determines that the person's continued service would be detrimental to the purposes of the Act.

§ 1260.214 Personal liability.

No member, employee or agent of the Board or the Committee, including employees or agents of a qualified State beef council acting on behalf of the Board, shall be held personally responsible, either individually or jointly, in any way whatsoever, to any person for errors in judgment, mistakes or other acts of either commission or omission, or such member or employee, except for acts of dishonesty or willful misconduct.

§ 1260.215 Patents, copyrights, inventions and publications.

(a) Any patents, copyrights, inventions or publications developed through the use of funds collected by the Board under the provisions of this subpart shall be the property of the U.S. Government as represented by the Board, and shall, along with any rents, royalties, residual payments, or other income from the rental, sale, leasing, franchising, or other uses of such patents, copyrights, inventions, or publications, ensure to the benefit of the Board. Upon termination of this subpart, § 1260.211 shall apply to determine disposition of all such property.

(b) Should patents, copyrights, inventions or publications be developed through the use of funds collected by the Board under this subpart and funds contributed by another organization or person, ownership and related rights to such patents, copyrights, inventions or publications shall be determined by agreement between the Board and the party contributing funds towards the development of such patent, copyright, invention or publication in a manner consistent with paragraph (a) of this section.

§ 1260.216 Amendments.

Amendments to this subpart may be proposed, from time to time, by the Board, or by any organization or association certified pursuant to the Act and this part, or by any interested person affected by the provisions of the Act, including the Secretary.

§ 1260.217 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart or the applicability thereof of other persons or circumstances shall not be affected thereby.

Subpart B—Rules and Regulations

Source: 53 FR 5754, Feb. 26, 1988, unless otherwise noted.

§ 1260.301 Terms defined.

As used throughout this subpart, unless the context otherwise requires, terms shall have the same meaning as the definition of such terms as appears in Subpart A of this part.

§ 1260.310 Domestic assessments.

(a) A $1.00 per head assessment on cattle sold shall be paid by the producer of the cattle in the manner designated in § 1260.311.

(b) If more than one producer shares the proceeds received for the cattle sold, each such producer is obligated to pay that portion of the assessments which are equivalent to the producer's proportionate share of the proceeds.

(c) Failure of the collecting person to collect the assessment on each head of cattle sold as designated in § 1260.311 shall not relieve the producer of his obligation to pay the assessment to the appropriate qualified State beef council or the Cattlemen's Board as required in § 1260.312.

§ 1260.311 Collecting persons for purposes of collection of assessments.

Collecting persons for purposes of collecting and remitting the $1.00 per head assessment shall be:

(a) Except as provided in paragraph (b) and (c) of this section, each person making payment to a producer for cattle purchased in the United States shall collect from the producer an assessment at the rate of $1.00 per head of cattle purchased and shall be responsible for remitting assessments to the qualified State beef council or the Cattlemen's Board as provided in § 1260.312. The collecting person shall collect the assessment at the time the collecting person makes payment or any credit to the producer's account for the cattle purchased. The person paying the producer shall give the producer a receipt indicating payment of the assessment.

(b) Any producer marketing cattle of that producer's own production in the form of beef or beef products to consumers, either directly or through retail or wholesale outlets, shall be responsible for remitting to the qualified State beef council or the Cattlemen's Board pursuant to § 1260.312, an assessment on such cattle at the rate of $1.00 per head of cattle or the equivalent thereof. The obligation to remit the assessment shall attach upon slaughter of the cattle, and the producer responsible for remitting the assessment shall remit the assessment in the manner provided in § 1260.312. For the purposes of this subpart, a producer marketing cattle of the producer's own production in the form of beef or beef products shall be considered a collecting person.

(c) In the States listed below there exists a requirement that cattle be brand inspected by State authorized inspectors prior to sale. In addition, when cattle are sold in the sales transactions listed below in those States, these State authorized inspectors are authorized to, and shall, collect assessments due as a result of the sale of cattle. In those transactions in which inspectors are responsible for collecting assessments, the person paying the producer shall not be responsible for the collection and remittance of such assessments. The following chart identifies the party responsible for collecting and remitting assessments in these States:

State	Sales through auction market	Sales to a slaughter/packet	Sales to a feedlot	Sales to an order buyer/dealer	Country sales[1]
Arizona	CP	CP	CP	B	B
California	CP	CP	B	B-CP	B
Colorado	CP	B	B	B	B
Idaho	CP	CP	B	B	B
Montana	CP	B	B	B	B
Nebraska	CP	CP	B-CP	B-CP	B-CP
Oregon	CP	B-CP	B	B	B
New Mexico	CP	B-CP	B-CP	B-CP	B-CP
Utah	CP	B-CP	B	B	B
Washington	CP	CP	B	B-CP	B
Wyoming	CP	B	B	B	B

Key:

B—Brand inspector has responsibility to collect and remit assessments due.

CP—The person paying the producer shall be the collecting person and has responsibility to collect and remit the assessments due.

B-CP—Brand inspector has responsibility to collect, however, when there has not been a physical brand inspection the person paying the producer shall be the collecting person and has the responsibility to collect and remit assessments due.

[1] For the purpose of this subpart, the tgerm "country sales" shall include any sales not conducted at an auction or livestock market and which is not a sale to a slaughter/packer, feedlot or an order buyer or dealer.

(d) For cattle delivered on futures contracts, the commission firm or the market agency representing the seller in the delivery of cattle shall be the collecting person.

(e) In a case where a producer sells cattle as part of a custom slaughter operation, the producer shall be the collecting person in the same manner as if the cattle were slaughtered for sale.

§ 1260.312 Remittance to the Cattlemen's Board or Qualified State Beef Council.

Each person responsible for the collection and remittance of assessments shall transmit assessments and a report of assessments to the qualified State beef council of the State in which such person resides or if there is no qualified State beef council in such State, then to the Cattlemen's Board as follows:

(a) *Reports.* Each collecting person shall make reports on forms made available or approved by the Cattlemen's Board. Each collecting person shall prepare a separate report for each reporting period. Each report shall be mailed to the qualified State beef council of the State in which the collecting person resides, or its designee, or if there exists no qualified State beef council in such State, to the Cattlemen's Board. Each report shall contain the following information:

(1) The number of cattle purchased, initially transferred or which, in any other manner, is subject to the collection of assessment, and the dates of such transactions;

(2) The amount of assessment remitted;

(3) The basis, if necessary, to show why the remittance is less than the number of head of cattle multiplied by one dollar; and

(4) The date any assessment was paid.

(b) *Reporting periods.* Each calendar month shall be a reporting period and the period shall end at the close of business on the last business day of the month.

(c) *Remittances.* The remitting person shall remit all assessments to the qualified State beef council or its designee, or, if there is no qualified State beef council, to the Cattlemen's Board at P.O. Box 27-275; Kansas City, Missouri 64180-0001, with the report required in paragraph (a) of this section not later than the 15th day of the following month. All remittances sent to a qualified State beef council or the Cattlemen's Board by the remitting persons shall be by check or money order payable to the order of the qualified State beef council or the Cattlemen's Board. All remittances shall be received subject to collection and payment at par.

§ 1260.313 Document evidencing payment of assessments.

Each collecting person responsible for remitting an assessment to a qualified State beef council or the Board, other than a producer slaughtering cattle of the producer's own production for sale, is required to give the producer from whom the collecting person collected an assessment written evidence of payment of the Beef Promotion and Research Assessments. Such written evidence serving as a receipt shall contain the following information:

(a) Name and address of the collecting person.

(b) Name of producer who paid assessment.

(c) Number of head of cattle sold.

(d) Total assessments paid by the producer.

(e) Date.

§ 1260.314 Certification of non-producer status for certain transactions.

(a) The assessment levied on each head of cattle sold shall not apply to cattle owned by a person:

(1) If the person certifies that the person's only share in the proceeds of a sale of cattle, beef, or beef products is a sales commission, handling fee or other service fee; or

(2) If the person:

(i) Certifies that the person acquired ownership of cattle to facilitate the transfer of ownership of such cattle from the seller to a third party,

(ii) Establishes that such cattle were resold not later than 10 days from the date on which the person acquired ownership; and

(iii) Certifies that the assessment levied upon the person from whom the person purchased the cattle, if an assessment was due, has been collected and has been remitted, or will be remitted in a timely fashion.

(b) Each person seeking non-producer status pursuant to § 1260.116 of this part shall provide the collecting person with a Statement of Certification of Non-Producer Status on a form approved by the Board and the Secretary.

(c) A copy of the Statement of Certification of Non-Producer Status shall be forwarded, upon request, by the collecting person to the qualified State beef council or the Cattlemen's Board.

§ 1260.315 Qualified State Beef Councils.

The following State beef promotion entities have been certified by the Board as qualified State beef councils:

Alabama Cattlemen's Association
Arizona Beef Council
Arkansas Beef Council
California Beef Council
Colorado Beef Council
Florida Beef Council, Inc.
Georgia Beef Board, Inc.
Idaho Beef Council
Illinois Beef Council
Indiana Beef Council
Iowa Beef Cattle Producers Association
Kansas Beef Council
Kentucky Beef Cattle Association
Lousiana Beef Industry Council
Maryland Beef Council
Michigan Beef Industry Commission
Minnesota Beef Council
Mississippi Cattle Industry Board
Missouri Beef Industry Council
Montana Beef Council
Nebraska Beef Industry Development Board
Nevada Beef Council
New Mexico Beef Council
New York Beef Industry Council
North Carolina Cattlemen's Association
North Dakota Beef Commission
Ohio Beef Council
Oklahoma Beef Commission
Oregon Beef Council
Pennsylvania Beef Council, Inc.

South Carolina Cattle and Beef Board
South Dakota Beef Industry Council
Tennessee Beef Industry Council
Texas Beef Industry Council
Utah Beef Council
Vermont Beef Council
Virginia Cattle Industry Board
Washington State Beef Commission
West Virginia Beef Industry
Wisconsin Beef Council
Wyoming Beef Council

§ 1260.316 Paperwork Reduction Act assigned number.

The information collection and recordkeeping requirements contained in this Part have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control number 0851-0152.

Subpart C—Procedure for the Conduct of Referendum

SOURCE: 53 FR 9858, Mar. 28, 1988, unless otherwise noted.

DEFINITIONS

§ 1260.401 Act.

"Act" means the Beef Promotion and Research Act of 1985 set forth in Title XVI, Subtitle A of the Food Security Act of 1985 (Pub. L. 99-198) and any amendments thereto.

§ 1260.402 Administrator.

"Administrator" means the Administrator of the Agricultural Marketing Service, or any officer or employee of the Department to whom there has heretofore been delegated or may hereafter be delegated, the authority to act in the Administrator's stead.

§ 1260.403 Agricultural Stabilization and Conservation County Committee.

"Agricultural Stabilization and Conservation County Committee," also referred to as "ASC County Committee" means the group of persons within a county elected to act as the county Agricultural Stabilization and Conservation Committee.

§ 1260.404 Agricultural Stabilization and Conservation Service.

"Agricultural Stabilization and Conservation Service," also referred to as "ASCS" means the Agricultural Stabilization and Conservation Service of the Department.

§ 1260.405 Agricultural Stabilization and Conservation Service County Executive Director.

"Agricultural Stabilization and Conservation Service County Executive Director," also referred to as "ASCS county Executive Director" means the person employed by the ASC county committee to execute the policies of the ASC county committee and be responsible for the day-to-day operation of the ASCS county office, or the person acting in such capacity.

§ 1260.406 Beef.

"Beef" means flesh of cattle.

§ 1260.407 Beef Products.

"Beef Products" means edible products produced in whole or in part from beef, exclusive of milk and products made therefrom.

§ 1260.408 Cattle.

"Cattle" means live domesticated bovine animals regardless of age.

§ 1260.409 Department.

"Department" means the United States Department of Agriculture.

§ 1260.410 Deputy Administrator.

"Deputy Administrator" means the Deputy or Acting Deputy Administrator, State and County Operations, Agriculture Stabilization and Conservation Service, U.S. Department of Agriculture.

§ 1260.411 Extension Service.

"Extension Service" also referred to as "ES" means the Extension Service of the Department.

§ 1260.412 Extension Service Agent.

"Extension Service Agent" also referred to as "ES Agent" or designee means an employee of the Extension Service of the Department.

§ 1260.413 Imported Beef and Beef Products.

"Imported Beef and Beef Products" means products which are imported into the United States which the Secretary determines contain a substantial amount of beef including those products which have been assigned one or more of the following numbers in the Tariff Schedule of the United States: 106.1020, 106.1040, 106.1060, 106.1080, 107.2000, 107.2520, 107.4000, 107.4500, 107.4820, 107.4840, 107.5220, 107.5240, 107.5500, 107.6100, 107.6200, 107.6300.

§ 1260.414 Importer.

"Importer" means any person who imports cattle, beef or beef products from outside the United States.

§ 1260.415 Order.

"Order" means the Beef Promotion and Research Order.

§ 1260.416 Person.

"Person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity.

§ 1260.417 Producer.

"Producer" means any person who owns or acquires ownership of cattle; provided, however, that a person shall not be considered a producer within the meaning of this subpart if (a) the person's only share in the proceeds of a sale of cattle or beef is a sales commission, handling fee, or other service fee; or (b) the person (1) acquired ownership of cattle to facilitate the transfer of ownership of such cattle from the seller to a third party, (2) resold such cattle no later than ten (10) days from the date on which the person acquired ownership, and (3) certified, as required by regulations prescribed by the Board and approved by the Secretary, that the requirements of this provision have been satisfied.

§ 1260.418 Public Notice.

"Public Notice" means information regarding a referendum which shall be provided by the Secretary, without advertising expenses, through press releases and by State and county ES offices and county ASCS offices, by means of newspapers, television, radio, county newsletters, and the like. Such notice shall contain the referendum date, registration and voting requirements, and other pertinent information.

§ 1260.419 Referendum.

"Referendum" means the initial referendum to be conducted pursuant to the Act by the Secretary not later than 22 months after issuance of an Order whereby producers and importers shall be given the opportunity to vote to determine whether the continuance of the Order is favored by a majority of producers and importers voting.

§ 1260.420 Registration period.

"Registration period" means a 1-day period to be announced by the Secretary for registration of producers and importers desiring to vote in a referendum. The registration period shall be the same day as the voting period.

§ 1260.421 Representative period.

"Representative period" means the period designated by the Secretary pursuant to section 7(a) of the Act.

§ 1260.422 Secretary.

"Secretary" means the Secretary of Agriculture of the United States or any other officer or employee of the Department to whom there has heretofore been delegated, or to whom there may hereafter be delegated, the authority to act in the Secretary's stead.

§ 1260.423 State.

"State" means each of the 50 States.

§ 1260.424 United States.

"United States" means the 50 States and the District of Columbia.

§ 1260.425 Voting period.

"Voting period" means a 1-day period to be announced by the Secretary for voting in a referendum.

REFERENDUM

§ 1260.426 General.

(a) A referendum to determine whether eligible producers and importers favor the continuance of the Order shall be conducted in accordance with this subpart.

(b) The Order shall continue only if the Secretary determines that the Order is approved or favored by a majority of the producers and importers casting valid ballots in a referendum.

(c) The referendum shall be conducted at the county offices of the Extension Service of the Department.

(d) The Agricultural Stabilization and Conservation Service of the Departmemt shall assist in the conduct of the referendum.

§ 1260.427 Supervision of referendum.

The Administrator (AMS) shall be responsible for conducting the referendum in accordance with this subpart.

§ 1260.428 Eligibility.

(a) *Eligible Producers.* Each person who was a producer during the representative period is entitled to register and vote in the referendum. Each producer entity shall be entitled to cast only one ballot in the referendum.

(b) *Eligible Importers.* Each person who was an importer during the representative period is entitled to register and vote in the referendum. Each importer entity shall be entitled to cast only one ballot in the referendum.

(c) *Proxy registration and voting.* Proxy registration and voting is not authorized except that an officer or employee of a corporate producer or corporate importer, or any guardian, administrator, executor, or trustee of a producer's or importer's estate, or an authorized representative of any eligible producer entity or eligible importer entity (other than an individual producer or importer), such as a corporation or partnership, may register and cast a ballot on behalf of such entity. Any individual registering to vote in the referendum on behalf of any producer or importer entity shall certify that he or she is authorized by such entity to take such action.

(d) *Joint and group interest.* A group of individuals, such as members of a family, joint tenants, tenants in common, a partnership, owners of community property, or a corporation, engaged in the production of cattle as a producer entity or in the importation of cattle, beef, or beef products into the United States as an importer entity shall be entitled to only one vote; provided, however, that any member of a group may register to vote as a producer or importer if he or she is an eligible producer or importer separate from the group.

§ 1260.429 Time and place of registration and voting.

The referendum shall be held for 1 day on a date to be determined by the Secretary. Eligible persons shall register and vote following the procedures in § 1260.432. Except for absentee ballots, the registration and voting shall take place during the normal business hours of each county ES office.

§ 1260.430 Facilities for registering and voting.

Each county ES office shall provide: (1) Adequate facilities and space to permit producers and importers to register and to mark their ballots in secret and (2) a sealed box or other suitable receptacle for registration forms and ballots which shall be kept under observation during office hours and secured at all times. Copies of the Order shall be available for review.

§ 1260.431 Registration form and ballot.

A registration form/envelope marked "Beef Referendum" (Form LS-40-2) and ballot (Form LS-40) shall be used for voting in person. The information required on the registration form, which is printed on an envelope, includes name, address, phone number, and voter status (producer or importer). The registration form/envelope also contains a certification statement, referenced in § 1260.432(a)(1). The ballot requires producers and importers to check a "yes" or a "no." A similar registration form and ballot (Form LS-39) shall be used for absentee voting.

§ 1260.432 Registration and voting procedure.

(a) *Registering and voting in person.* (1) Each producer and importer desiring to vote in the referendum shall register on the day of voting at the county ES office in which the producer's or importer's residence is located or at the county ES office serving the county in which the producer's or importer's residence is located. Producer or importer entities other than individuals shall register at the county ES office in the county in which their headquarters office or business is located or at the county ES office serving the county in which the entities' headquarters office or business is located. Producers and importers will be required to list their names on the voter registration list (Form LS-40-3) prior to receiving a registration form and ballot. To register, each producer or importer shall complete the registration form/envelope and certify that: (1) They or the entity they represent were producers or importers during the specified representative period and (2) if voting on behalf of an entity referred to in § 1260.428, they are authorized to do so.

(2) Each eligible producer or importer who has not voted by means of an absentee ballot may cast a ballot in person at the location and time set forth in § 1260.429 and on a date to be announced by the Secretary. Eligible persons who enter their names on the voter registration list (Form LS-40-3) will receive a registration form/envelope (Form LS-40-2) and a ballot (Form LS-40). Voting shall be by secret ballot under the supervision of the local county ES agent or designee. The ballot shall be marked by the voter to indicate "yes" or "no." Voters shall place their marked ballots in an envelope marked "Beef Ballot", seal it and place it in the completed and signed registration form/envelope, seal that envelope and personally place it in a box marked "Ballot Box" or other suitable receptacle.

(b) *Absentee voting.* (1) Eligible producers or importers unable to vote in person may request and obtain a combined absentee registration form and absentee ballot (Form LS-39) and two envelopes—one marked "BEEF BALLOT" and the other marked "BEEF REFERENDUM" by mail from the State ES office of the State in which they reside if individuals, or where their main office is located, if a corporation or other entity. To facilitate mailing of absentee ballots the "BEEF REFERENDUM" envelope will be preaddressed with the address of the county ES office in which the person requesting the absentee ballot resides or has its main office, or the county ES office serving the county in which the person requesting the absentee ballot resides or has its main office if: (1) The person requesting the absentee ballot includes in the address his or her county of residence or the county where its main office is located or (2) if such county can be otherwise determined. Only one absentee registration form and absentee ballot will be provided to each eligible producer or importer. Form LS-39 must be requested in writing and will be available from State ES offices during a specified time period which will be announced by the Secretary. The State ES office shall enter on the absentee voter request list (Form LS-39-3) the name and address of each person or entity requesting an absentee ballot, and the date the Form LS-39 was mailed. A copy of the applicable absentee voter request list (Form LS-39-3) prepared by the State ES office shall be provided to the appropriate county ES agent who shall deliver it to each ASCS county office as provided for in § 1260.436 for absentee voter verification.

(2) To register, eligible producers or importers must complete and sign the registration form (Form LS-39), and certify that (1) they or the entity they represent were producers or importers during the specified representative period and (2) if voting on behalf of an entity referred to in § 1260.428, they are authorized to do so.

(3) A producer or importer, after completing the registration form and marking the ballot, shall remove the ballot portion of Form LS-39 and seal the completed ballot in a separate envelope marked "BEEF BALLOT" and place it in a second envelope marked "BEEF REFERENDUM" along with the signed registration form. Produc-

ers and importers shall print and sign their names on the envelope marked "BEEF REFERENDUM" and mail it to the local county ES office of the county in which they reside or the county ES office serving the county in which they reside. In the case of a partnership, corporation, estate, or other entity, the registration form and ballot must be mailed to the county ES office in the county in which its main office is located or the county ES office in the county serving the county in which its main office is located.

(4) Absentee ballots must be received in the county ES office by the close of business, 5 business days before the date of the referendum. Absentee ballots received after that date shall be counted as invalid ballots. Upon receiving the "BEEF REFERENDUM" envelope containing the registration form and ballot, the county ES agent or designee shall place it, unopened in a secure ballot box. The county ES agent or designee shall enter the names of absentee voters on the voter registration list (Form LS-40-3).

(5) A person casting an absentee ballot which is not recorded as being received or which is received after the deadline specified in this section may vote in person at the appropriate county ES office on the day of the referendum.

§ 1260.433 List of registered producers and importers.

The voter registration list (Form LS-40-3) shall be available for inspection on the day of the referendum at the county ES office and subsequently at the ASCS county office. It shall be posted during regular office hours in a conspicuous public location at the ASCS county office on the second business day following the date of the referendum.

§ 1260.434 Challenge of eligibility.

(a) *Challenge period.* On the day of the referendum, the names of challenged voters may be reported to the ES county agent who will refer them to the ASCS county office. After that, the names of challenged voters shall be referred directly to the ASCS county office. A challenge of a person's eligibility to vote may be made no later than the close of business on the second business day after the date of the referendum.

(b) *Who may challenge.* A person's eligibility to vote may be challenged by any person.

(c) *Determination of challenges.* The ASC county committee or its representative shall make a determination concerning the eligibility of a producer or importer who has been challenged and notify challenged producers and importers as soon as practicable, but not later than 5 business days after the date of the referendum. If the ASC county committee or its representative is unable to determine whether a person was a producer or importer during the representative period, it may require the person to submit records such as tax returns, sales documents, purchase documents, or other similar documents to prove that the person was a producer or importer during the representative period.

(d) *Challenged ballot.* The registration form/envelopes (Form LS-40-2) containing the ballots cast by producers and importers voting in person whose eligibility is challenged shall be removed from the ballot box and placed in a separate box until the challenge has been resolved. Envelopes containing absentee voter registration forms and absentee ballots (Fons LS-39) of challenged absentee voters also shall be removed from the ballot box and placed in the box containing ballots of challenged producers and importers. A challenged ballot shall be determined to have been resolved if the determination of the ASC county committee or its representative is not appealed within the time allowed for appeal or there has been a determination by the ASC county committee after an appeal.

(e) *Appeal.* A person declared to be ineligible to register and vote by the ASC county comnittee or its representative may file an appeal at the ASCS county office within 3 business days after notification of such decision. Such person may be required to provide documentation such as tax returns, sales documents, or purchase documents in order to demonstrate his or her eligibility. An appeal shall be determined by the ASC county committee as soon as practicable, but in all cases not later than the 9th business day after the date of the referendum. The ASC county committee's determination on an appeal is final.

§ 1260.435 Receiving ballots.

A ballot shall be considered to have been received during the voting period if: (a) It was cast in the county ES office prior to the close of business on the day of the referendum or (b) an absentee ballot was received in the county ES office not later than close of business 5 business days before the date of the referendum.

§ 1260.436 Canvassing ballots.

(a) *Counting the ballots.* The county ES agent or designee shall deliver: (1) The sealed ballot box, (2) the voter registration list (Form LS-40-3) and (3) the absentee voter request list (Form LS-39-3) to the ASCS county office by the close of business on the first business day following the date of the referendum. ASCS county employees and the county ES agent or designee shall check the registration forms of all voters against the voter registration list (Form LS-40-3) and the absentee voter request list (Form LS-39-3) to determine properly registered voters. The ballots of producers or importers voting in person whose names are not on the voter registration list (Form LS-40-3) shall be declared invalid. Likewise, the ballots of producers or importers voting absentee, whose names are not on the absentee voter request list (Form LS-39-3) shall be declared invalid. Ballots declared invalid and all ballots of challenged voters declared ineligible shall be kept separate from the other ballots and the envelopes containing these ballots shall not be opened. The valid ballots shall be counted on the 10th business day after the referendum date. ASCS county office employees shall remove the sealed "BEEF BALLOT" envelopes from the registration form/envelopes or absentee ballot envelopes of all eligible voters and all challenged voters determined to be eligible. When removing the "BEEF BALLOT" envelopes, steps shall be taken to ensure that the voter's name cannot be identified. After removing all "BEEF BALLOT" envelopes, ASCS county employees shall open them and count the ballots. The ballots shall be tabulated as follows: (1) Number of eligible producers and importers casting valid ballots, (2) number of producers and importers favoring the order, (3) number of producers and importers not favoring the order, (4) the number of challenged ballots, (5) the number of challenged ballots deemed ineligible, (6) number of invalid ballots, and (7) the number of spoiled ballots.

(b) *Invalid Ballots.* Ballots shall be declared invalid if a producer or importer voting in person has failed to sign the voter registration list (Form LS-40-3), or an absentee voter's name is not on the absentee voter request list (Form LS-39-3), or the registration form or ballot was incomplete or incorrectly completed.

(c) *Spoiled ballots.* Ballots shall be considered as spoiled ballots when they are mutilated or marked in such a way that it cannot be determined whether it is a "yes" or a "no" vote. Spoiled ballots shall not be considered as approving or disapproving the Order, or as a ballot cast in the referendum.

(d) *Confidentiality.* All ballots shall be confidential and the contents of the ballots shall not be divulged except as the Secretary may direct. The public may witness the opening of the ballot box and tabulation of the votes but may not interfere with the process.

§ 1260.437 ASCS county office report.

The ASCS county office shall notify the ASCS State office of the results of the referendum. Each ASCS county office shall transmit the results of the referendum in its county to the ASCS State office. Such report shall include the information listed in § 1260.436(a). The results of the referendum in each county may be made available to the public immediately after the ballots have been counted and any verification for accuracy has been completed. A copy of the report of those results shall be posted for 30 days in the ASCS county office in a conspicuous place accessible to the public, and a copy shall be kept on file in the ASCS county office for a period of at least 12 months.

§ 1260.438 ASCS State office report.

Each ASCS State office shall transmit to the Deputy Administrator, ASCS, a written summary of the results of the referendum received from all the ASCS county offices within the State. The summary shall include the information on the referendum results contained in the reports from all county offices within each State and be certified by the ASCS State executive director. The ASCS State office shall maintain a copy of the summary where it shall be available for public inspection for a period of not less than 12 months.

§ 1260.439 Results of the referendum.

(a) The Deputy Administrator, ASCS, shall submit to the Administrator, AMS, the results of the referendum. The Administrator shall prepare and submit to the Secretary a report of the results of the referendum. The results of the referendun shall be issued by the Department in an official press release and published in the FEDERAL REGISTER. State reports, and related papers shall be available for public inspection in the office of the Marketing Programs and Procurement Branch, Livestock and Seed Division, Agricultural Marketing Service, USDA, Room 2610 South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC.

(b) If the Secretary deems it necessary, the report of any State or county shall be re-examined and checked by such persons that may be designated by the Deputy Administrator, ASCS, or the Secretary.

§ 1260.440 Disposition of ballots and records.

Each ASCS county executive director shall place in sealed containers marked with the identification of the referendum, the voter registration list, absentee voter request list, voted ballots, challenged registration forms/envelopes, challenged absentee voter registration forms, challenged ballots found to be ineligible, invalid ballots, spoiled ballots, and county summaries. Such records shall be placed under lock in a safe place under the custody of the ASCS county executive director for a period of not less than 12 months after the referendum. If no notice to the contrary is received from the Deputy Administrator, ASCS, by the end of such time, the records shall be destroyed.

§ 1260.441 Instructions and forms.

The Administrator is hereby authorized to prescribe additional instructions and forms not inconsistent with the provisions of this subpart to govern the conduct of the referendum.

Subpart D—Beef Promotion and Research: Certification and Nomination Procedures for the Cattlemen's Beef Promotion and Research Board

SOURCE: 51 FR 11559, Apr. 4, 1986, unless otherwise noted. Redesignated at 51 FR 26138, July 18, 1986, 51 FR 35197, Oct. 1, 1986, and 53 FR 9858, Mar. 28, 1988.

§ 1260.500 General.

State organizations or associations shall be certified by the Secretary as provided for in the Beef Promotion and Research Act of 1985 to be eligible to make nominations of cattle producers to the Board. Additionally, where there is no eligible organization or association in a State, the Secretary may provide for nominations in the manner prescribed in this subpart. Organizations or associations determined by the Secretary to represent importers of cattle, beef, and beef products may submit nominations for membership on the Board in a manner prescribed by the Secretary in this subpart. The number of nominees required for each allotted position will be determined by the Secretary.

§ 1260.510 Definitions.

As used in this subpart:

"Act" means the Beef Promotion and Research Act of 1985 (7 U.S.C. 2901-2918).

"Beef" means the flesh of cattle.

"Beef products" means edible products produced in whole or in part from beef, exclusive of milk and milk products produced therefrom.

"Board" means the Cattlemen's Beef Promotion and Research Board established under section 5(1) of the Act.

"Cattle" means live, domesticated bovine animals regardless of age.

"Department" means the United States Department of Agriculture.

"Importer" means a person who imports cattle, beef, or beef products from outside the United States.

"Livestock and Seed Division" means the Livestock and Seed Division of the Department's Agricultural Marketing Service.

"Producer" means a person who owns or acquires ownership of cattle, except that a person shall not be considered to be a producer if the person's only share in the proceeds of a sale of cattle or beef is a sales commission, handling fee, or other service fee.

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

"State" means each of the 50 States.

"Unit" means a State or combination of States which has a total inventory of not less than 500,000 head of cattle; or importers.

§ 1260.520 Responsibility for administration of regulations.

The Livestock and Seed Division shall have the responsibility for administering the provisions of this subpart.

§ 1260.530 Certification of eligibility.

(a) *State organizations or associations: Requirements for certification.* (1) To be eligible for certification to nominate producer members to the Board, State organizations or associations must meet all of the following criteria:

(i) Total paid membership must be comprised of at least a majority of cattle producers or represent at least a majority of cattle producers in a State or unit.

(ii) Membership must represent a substantial number of producers who produce a substantial number of cattle in such State or unit.

(iii) There must be a history of stability and permanency.

(iv) There must be a primary or overriding purpose of promoting the economic welfare of cattle producers.

(2) Written evidence of compliance with the certification criteria shall be contained in a factual report submitted to the Secretary by all applicant State organizations or associations.

(3) The primary consideration in determining the eligibility of a State organization or association shall be based on the criteria set forth in this section. However, the Secretary may consider any additional information that the Secretary deems relevant and appropriate.

(4) The Secretary shall certify any State organization or association which he determines complies with the criteria in this section, and his eligibility determination shall be final.

(b) *Organizations or associations representing importers.* The determination by the Secretary as to the eligibility of importer organizations or associations to nominate members to the Board shall be based on applications containing the following information:

(1) The number and type of members represented (i.e., beef, or cattle importers, etc.).

(2) Annual import volume in pounds of beef and beef products and/or the number of head of cattle.

(3) The stability and permanency of the importer organization or association.

(4) The number of years in existence.

(5) The names of the countries of origin for cattle, beef, or beef products imported.

The Secretary may also consider additional information that the Secretary deems relevant and appropriate. The Secretary's determination as to eligibility shall be final.

§ 1260.540 Application for certification.

(a) *State organizations or associations.* Any State organization or association which meets the eligibility criteria specified in § 1260.530(a) for certification is entitled to apply to the Secretary for such certification of eligibility to nominate producers for appointment to the Board. To apply, such organization or association must submit a completed "Application for Certification of Organization or Association," Form LS-25, contained in § 1260.640. It may be reproduced or additional copies may be obtained from the Livestock and Seed Division; Agricultural Marketing Service, USDA; 14th and Independence Avenue, SW., Room 2610-S; Washington, DC 20250. (Telephone: 202/447-2650.)

(b) *Importer organizations or associations.* Any organization or association whose members import cattle, beef, or beef products into the United States may apply to the Secretary for determination of eligibility to nominate importers under the Act. Applications shall be in writing and shall contain the information required by § 1260.530. Interested organizations or associations may contact the Livestock and Seed Division; Agricultural Marketing Service, USDA; 14th and Independence Avenue, SW., Room 2610-S; Washington, DC 20250; (Telephone: 202/447-2650) for information concerning application procedures.

§ 1260.550 Verification of information.

The Secretary may require verification of the information to determine eligibility for certification to make nominations under the Act.

§ 1250.560 Review of certification.

The Secretary may terminate or suspend certification or eligibility of any organization or association if it ceases to comply with the certification or eligibility criteria set forth in this subpart. The Secretary may require any information deemed necessary to ascertain whether the organization or association may remain certified or eligible to make nominations.

§ 1260.570 Notification of certification and the listing of certified organizations.

Organizations and associations shall be notified in writing as to whether they are eligible to nominate producer members to the Board. A copy of the certification or eligibility determination shall be furnished to certified or eligible organizations and associations. Copies shall also be maintained on file in the Livestock and Seed Division office, where they will be available for inspection.

§ 1260.580 Nomination of producers for appointment to the initial Board.

Nominations to the initial Board shall be made in the following manner:

(a) When notifying a State organization or association that it has been certified, the Secretary shall concurrently advise the organization or association of the number of positions on the Board allotted to that organization's or association's respective State. The Secretary also shall request the names of the certified organization's or association's nominees for each allotted position.

(b) When more than one State organization or association in a State or unit is certified, the Secretary shall provide each such certified State organization or association with a list of all other certified State organizations or associations in the same State or unit.

(c) If there is more than one certified State organization or association within a State or unit, such State organization or associations may jointly nominate producers for each allotted position on the Board.

(d) Nominations shall be submittted by certified State organizations or associations pursuant to this section.

(e) If the Secretary determines that there is no eligible organization or association in a State which can be certified pursuant to paragraph (d), § 1260.530, the Secretary may obtain nominations from one or more of the following:

(1) Other related organizations,

(2) State Departments of Agriculture, and

(3) Individuals who are residents of such State and who are determined by the Secretary to be knowledgeable about the beef industry in such State.

§ 1260.590 Nomination of importers for appointment to the initial Board.

(a) The Secretary shall notify in writing applicant importer organizations or association of their eligibility to nominate importer members to the Board and advise them of the allotted number of importer positions on the

Board. Eligible organizations or association may nominate members for each position allotted to importers.

(b) The Secretary shall provide importer organizations or associations with the names of all other eligible importer organizations.

(c) If there are two or more eligible importer organizations or associations, they may jointly nominate importers for each allotted position on the Board.

§ 1260.600 [Reserved]

§ 1260.610 Acceptance of appointment.

Producers and importers nominated to the Board must signify in writing their intent to serve if appointed.

§ 1260.620 Confidential treatment of information.

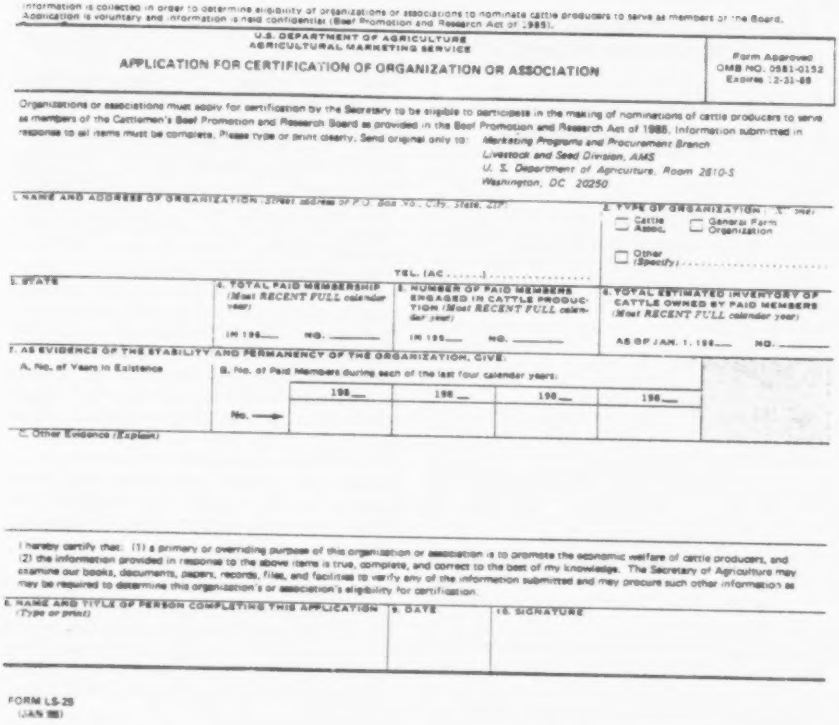
All documents and information submitted to or obtained by the Department shall be kept confidential by all employees of the Department, except that the Secretary may issue general statements based upon the information collected from a number of different sources. These general statements will not identify any information as having been furnished by any one source.

§ 1260.630 Paperwork Reduction Act assigned number.

The OMB has approved the information collection request contained in this subpart under the provisions of 44 U.S.C. Chapter 35, and OMB Control Number 0581-152 has been assigned.

§ 1260.640 Application for Certification Form.

The following official form, "Application for Certification of Association or Organization," must be completed and submitted to the Department by eligible State organizations or associations seeking certification by the Secretary. This form may be reproduced.



Information is collected in order to determine eligibility of organizations or associations to nominate cattle producers to serve as members of the Board. Application is voluntary and information is held confidential (Beef Promotion and Research Act of 1985).

U.S. DEPARTMENT OF AGRICULTURE AGRICULTURAL MARKETING SERVICE APPLICATION FOR CERTIFICATION OF ORGANIZATION OR ASSOCIATION	Form Approved OMB NO. 0581-0152 Expires 12-31-88

Organizations or associations must apply for certification by the Secretary to be eligible to participate in the making of nominations of cattle producers to serve as members of the Cattlemen's Beef Promotion and Research Board as provided in the Beef Promotion and Research Act of 1985. Information submitted in response to all items must be complete. Please type or print clearly. Send original only to:

Marketing Programs and Procurement Branch
Livestock and Seed Division, AMS
U. S. Department of Agriculture, Room 2610-S
Washington, DC 20250

1. NAME AND ADDRESS OF ORGANIZATION *(Street address or P.O. Box No., City, State, ZIP)* TEL. (AC ......)			2. TYPE OF ORGANIZATION ("X" one) ☐ Cattle Assoc. ☐ General Farm Organization ☐ Other *(Specify)* ....
3. STATE	4. TOTAL PAID MEMBERSHIP *(Most RECENT FULL calendar year)* IN 198__ NO. ______	5. NUMBER OF PAID MEMBERS ENGAGED IN CATTLE PRODUCTION *(Most RECENT FULL calendar year)* IN 198__ NO. ______	6. TOTAL ESTIMATED INVENTORY OF CATTLE OWNED BY PAID MEMBERS *(Most RECENT FULL calendar year)* AS OF JAN. 1, 198__ NO. ______

7. AS EVIDENCE OF THE STABILITY AND PERMANENCY OF THE ORGANIZATION, GIVE:

A. No. of Years in Existence	B. No. of Paid Members during each of the last four calendar years:				
		198__	198__	198__	198__
	No. ⟶				

C. Other Evidence *(Explain)*

I hereby certify that: (1) a primary or overriding purpose of this organization or association is to promote the economic welfare of cattle producers, and (2) the information provided in response to the above items is true, complete, and correct to the best of my knowledge. The Secretary of Agriculture may examine our books, documents, papers, records, files, and facilities to verify any of the information submitted and may procure such other information as may be required to determine this organization's or association's eligibility for certification.

8. NAME AND TITLE OF PERSON COMPLETING THIS APPLICATION *(Type or print)*	9. DATE	10. SIGNATURE

FORM LS-25
(JAN [illegible])

PART 1270—WOOL AND MOHAIR ADVERTISING AND PROMOTION

Subpart—Procedure for the Conduct of Referendums

Sec.

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APPENDIX I—AGREEMENT BETWEEN THE AMERICAN SHEEP PRODUCERS COUNCIL, INC., AND THE U.S. DEPARTMENT OF AGRICULTURE

AUTHORITY: Sec. 708, 68 Stat. 912, as amended (7 U.S.C. 1787).

Subpart—Procedure for the Conduct of Referendums

SOURCE: 43 FR 32124, July 25, 1978, unless otherwise noted.

§ 1270.1 Referendums.

Referendums for the purpose of determining producer approval of any proposed agreement between the Secretary of Agriculture and any marketing cooperative, trade association, or other producer group whose members are engaged in the handling of wool, sheep, mohair, goats or the products thereof, shall be conducted in accordance with this subpart.

§ 1270.2 Definitions.

(a) "Secretary" means the Secretary of Agriculture or any other officer or employee of the U.S. Department of Agriculture to whom there has heretofore been delegated, or to whom there may hereafter be delegated, the authority to act in his stead.

(b) "ASCS" means the Agricultural Stabilization and Conservation Service.

(c) "Act" means the National Wool Act of 1954 (7 U.S.C. 1781 et seq.) and any amendments thereto.

(d) "Deputy Administrator" means the Deputy or Acting Deputy Administrator, State and County Operations, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture.

(e) "State ASC Committee" means the group of persons within a State designated by the Secretary to act as the State Agricultural Stabilization and Conservation Committee.

(f) "County ASC Committee" means the group of persons within a county elected to act as the county Agricultural Stabilization and Conservation Committee, pursuant to the regulations governing the election and functioning of the county Agricultural Stabilization and Conservation Committee.

(g) "County ASCS Executive Director" means the person employed by the county ASC committee to execute the policies of the county ASC committee and be responsible for the day-to-day operation of the county ASCS office, or the person acting in such capacity.

(h) "Person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity.

(i) "Agreement" means any agreement between the Secretary of Agriculture and any marketing cooperative, trade association, or other producer group whose members are engaged in the handling of wool, sheep, mohair, goats, or the products thereof, for the purpose of developing and conducting advertising and sales promotion programs and programs for the development and dissemination of information on product quality, production management, and marketing improvement for the commodities handled by its members. The agreement may authorize the Secretary to make deductions from the incentive payments made to producers by the Commodity Credit Corporation for the purpose of funding the programs for advertising and sales promotion and dissemination of information carried out under such agreement.

(j) "Representative period" means a consecutive 12-month period preceding the referendum designated by the Secretary.

(k) "Voting period" means a 12-day period to be announced for voting in the referendum.

§ 1270.3 Supervision of referendums.

The Deputy Administrator shall be in charge of and responsible for conducting each referendum in accordance with this subpart. Each State ASC committee shall be in charge of and responsible for supervising and directing the conduct of the referendum in its State. Each county ASC committee shall be responsible for conducting the referendum in its county. It shall be the duty of the Deputy Administrator and of each committee to conduct each referendum in a fair, unbiased and impartial manner, in accordance with this subpart.

§ 1270.4 Requirements of referendums.

An agreement shall become effective if the Secretary determines that it is approved or favored by (a) at least two-thirds of the eligible producers voting in the referendum or (b) eligible producers who produced at least two-thirds of the volume of sheep or goats, as the case may be, represented in the referendum.

§ 1270.5 Computation of time.

Sundays and Federal holidays shall be included in computing the time allowed for the filing of any documents or taking any action: *Provided*, That when such time expires on a Sunday or a Federal holiday, such period shall be extended to include the next following business day.

§ 1270.6 Public notice.

Advance public notice of the referendum shall be provided without commercial advertising expense by the State and county ASCS offices by means of newspapers, television, county newsletter, county extension agents, etc. Such notice shall announce the voting requirements and other pertinent information.

§ 1270.7 Eligibility.

(a) *Eligible producer.* Each producer who during a single period of at least 30 days during the representative period owned in the United States any sheep or goats, as the case may be, 6 months of age or older is entitled to vote in the referendum. Each producer entity shall be entitled to cast only one ballot in the referendum.

(b) *Proxy voting.* Proxy voting is not authorized except that an officer or employee of a corporate producer, or any guardian, administrator, executor, or trustee of a producer's estate, or an authorized representative of any producer entity (other than an individual producer), such as a corporation or partnership, may cast a ballot on behalf of such entity. Any individual voting in the referendum on behalf of any producer entity shall certify that he or she is authorized by such entity to take such action.

(c) *Joint and group interest.* A group of individuals, such as members of a family, joint tenants, tenants in common, a partnership, owners of community property, or a corporation, engaged in the production of sheep or goats, as the case may be, as a producer entity shall be entitled to only one vote; *Provided, however,* That any member of a group may vote as a producer if he or she is an eligible producer separate from the group, except as provided in paragraph (d) of this section and § 1270.8(c)(2).

(d) *Cooperative association.* A cooperative association may qualify to vote by filing with the Director of the Emergency and Indemnity Payments Division, ASCS, USDA, Washington, DC 20250, not later than the date announced by the Department of Agriculture, the following documents: (1) A certified copy of the articles of incorporation and bylaws of the association, and (2) a certified copy of the resolution adopted by the association's board of directors authorizing the association to vote in the referendum. The Emergency and Indemnity Payments Division, ASCS, will send a ballot to each cooperative association which establishes its eligibility to vote. A cooperative association which qualifies to vote shall cast one ballot for all the eligible producers who, on the date the ballot is cast, are members of, stockholders in, or are under contract to sell their wool, sheep, mohair or goats, as the case may be, through the association in the marketing year (January 1 through December 31) in which the referendum is held. The number of votes to be counted for the ballot cast by the cooperative association shall be equal to the number of eligible producer-members in the cooperative association. If a ballot is cast by a cooperative association, the eligible producer-members of such cooperative association shall not otherwise cast ballots in the referendum.

§ 1270.8 Voting.

(a) *Mailing of ballots.* Each ASCS county office will mail ballots to all producers of whom the office has knowledge having ranch or farm headquarters located in its county. A producer who believes that he or she is eligible to vote but has not received a ballot, can obtain a ballot from the State or county ASCS office upon request. The Emergency and Indemnity Payments Division, ASCS, USDA, will mail ballots to all cooperative associations which qualify to vote on behalf of their members and others in accordance with § 1270.7(d) of this subpart.

(b) *Facilities and ballot box.* Each county ASCS office shall provide (1) adequate facilities and space to permit producers to mark their ballots in secret and (2) a sealed ballot box which shall be kept under observation during office hours and secured at all times until the ballots are counted.

(c) *Voting*—(1) *All producers except cooperative associations.* Voting may be in person or by mail. Each producer shall cast a ballot on form CCC 1160 with the County ASCS office where the producer's farm or ranch headquarters is located. The producer shall provide the following information on the ballot: (i) The date, (ii) a "yes" or "no" vote by marking the appropriate box, (iii) the number of sheep or goats, as the case may be, 6 months of age or older, located in the United States which the producer owned continuously during a single period of at least 30 days during the representative period, (iv) the address of the producer and (v) the signature of the producer. If the ballot is being cast on behalf of a partnership, corporation, or other entity, except a cooperative association, the person casting the ballot must provide the name and address of the producer entity he or she represents, and certify that he or she is authorized to vote on behalf of the producer entity.

(2) *Cooperative associations.* A cooperative association shall return its marked ballot to the Director, Emergency and Indemnity Payments Division, ASCS, USDA, Washington, DC, 20250, so that it will reach that office not later than the date designated by the Department of Agriculture. Each ballot cast by a cooperative association shall be accompanied by the original and two copies of a listing showing the names and addresses of all producers, otherwise eligible to vote, who on the date the vote is cast are members of, stockholders in, or under contract to sell their wool, sheep, mohair or goats, as the case may be, through the association in the marketing year in which the referendum is held. The producer's names shall be arranged alphabetically, on a separate sheet for each county. The listing for each county shall be headed by the name and address of the cooperative association and show whether the cooperative association was voting "yes" or "no" in the referendum. In preparing the listings, the cooperative association shall show for each producer the number of sheep or goats, as the case may be, 6 months of age or older which he owned continuously in the United States during a single period of at least 30 days during the representative period. After checking the ballots and lists from the cooperative associations for completeness, the lists of producers for whom the cooperative associations have voted will be forwarded to the ASCS State offices concerned for distribution to the respective ASCS county offices. If a producer casts a ballot as an individual and a cooperative association's ballot lists the producer as a member, the producer's vote by the cooperative association shall count and not the individual ballot cast by the producer. If two or more cooperative associations cast bal-

lots for the same producer, and the ballots take the same position with reference to the agreement which is the subject of the referendum, the producer's vote will be counted only once. If they take different positions, the producer's vote will not be counted.

§ 1270.9 Challenged ballots.

A person's eligibility to vote may be challenged by any person. The county executive director shall review all ballots and promptly challenge any ballot of a producer who appears to be ineligible or to have inaccurately indicated the number of sheep or goats, as the case may be, on the ballot.

(a) *Determination of challenges.* Any person whose ballot has been challenged or whose declaration of the number of sheep or goats, as the case may be, on the ballot has been challenged, must prove to the satisfaction of the county executive director that he or she was an eligible producer or that he or she did own the declared number of sheep or goats, as the case may be, during the representative period. Records such as tax returns, sales documents, purchase documents, or other similar documents may be submitted to prove that a person is an eligible producer or that he or she owned the declared number of sheep or goats. The county ASCS executive director shall make his or her determination concerning a challenged ballot and notify the producer of such determination as soon as practicable, but no later than two days after the opening of the ballot box.

(b) *Appeal.* Appeal from a decision by the county ASCS executive director on the eligibility of a person or as to the number of sheep or goats, as the case may be, owned by the producer, must be made to the county ASC committee within 2 business days after notification of such decision. Any appeal shall be determined by the county ASC committee as soon as practicable, but in all cases not later than 7 days after the opening of the ballot box.

§ 1270.10 Receiving ballots.

A ballot shall be considered to have been received during the voting period (a) if it was cast in the county ASCS office prior to the close of business on the final day of the voting period, or (b) if mailed, the ballot was postmarked not later than midnight on the final day of the voting period and received in the county ASCS office prior to the close of business on the fourth day after the close of the voting period.

§ 1270.11 Canvassing ballots.

(a) *Counting the ballots.* As soon as possible after opening of the county ASCS office on the fifth day after the close of the voting period, employees of the county ASCS office shall open the ballot box and count the ballots. The ballots shall be tabulated as follows:

(1) Number of eligible producers casting valid ballots, and the number of sheep or goats, as the case may be, indicated on their ballots,

(2) Number of eligible producers favoring the agreement and the number of sheep or goats, as the case may be, indicated on their ballots,

(3) Number of eligible producers not favoring the agreement and the number of sheep or goats, as the case may be, indicated on their ballots,

(4) The number of challenged ballots deemed invalid, and

(5) The number of spoiled ballots.

(b) *Spoiled ballots.* Ballots shall be considered as spoiled ballots when they are unsigned, mutilated, or marked in such a way that it cannot be determined whether it is a "yes" or "no" vote. Spoiled ballots shall not be considered as approving or disapproving the agreement or as a ballot cast in the referendum.

(c) *Confidentiality.* All ballots shall be treated as confidential and the contents of the ballots shall not be divulged except as provided for in this subpart or as the Secretary may direct. The public may witness the opening of the ballot box and the counting of the ballots, but shall remain a reasonable distance from the tabulation so as not to interfere with the tabulation or see how any person voted in the referendum.

§ 1270.12 County ASCS office report.

(a) *Preliminary report.* The county ASCS office shall notify the State ASCS office by telephone, telegraph, or messenger as to the preliminary results of the referendum as soon as possible. Each county ASCS office may release the unofficial results of the referendum in its county after the report has been given to the State ASCS office.

(b) *Final report.* Within 7 days after the opening of the ballot box, each county ASCS office shall transmit a written summary certified by the county ASCS executive director of the final results of the referendum in its county to the State ASCS office. Any appeal concerning a challenged ballot shall be resolved by the county ASC committee prior to the date of the final report. A copy of the summary shall be posted for 30 days in the county ASCS office in a conspicuous place accessible to the public and a copy shall be kept on file in the county office for a period of at least 12 months.

§ 1270.13 State ASCS office report.

(a) *Preliminary report.* Each State ASCS office shall send to the Deputy Administrator by telegraph as soon as possible a summary of the preliminary results of the referendum received from the county ASCS offices within its State. Each State ASCS office may release the unofficial results of the referendum in its State after its report has been sent to the Deputy Administrator.

(b) *Final report.* Within 10 days after the opening of the ballot boxes in the county ASCS offices each State ASCS office shall transmit to the Deputy Administrator a written summary of the final results of the referendum received from the county ASCS offices within the State. Such summary shall be prepared in triplicate and certified by the State ASCS executive director. The original and one copy of the summary shall be sent to the Deputy Administrator. One copy of the summary shall be maintained in the State ASCS office where it shall be availabe for public inspection for a period of not less than 12 months.

§ 1270.14 Results of referendums.

(a) The Deputy Administrator shall prepare and submit to the Secretary or his designee a report of the results of the referendum. The official results of the referendum shall be published in the FEDERAL REGISTER. State summaries and related papers shall be available for public inspection in the office of the Deputy Administrator, State and County Operations, ASCS, U.S. Department of Agriculture, Room 243-W, Administration Building, Washington, D.C.

(b) If the Deputy Administrator or the Secretary deems it necessary, the report of any State or county shall be reexamined and checked by such persons that may be designated by the Deputy Administrator or the Secretary.

§ 1270.15 Disposition of ballots and records.

The county ASCS executive director shall place the voted ballots, challenged ballots found to be ineligible, spoiled ballots, and county summaries in sealed containers marked with the identification of the referendum. Such records shall be placed under lock in a safe place under the custody of the county ASCS executive director for a period of not less than 12 months after the referendum. If no notice to the contrary is received from the Deputy Administrator by the end of such time, the records shall be destroyed.

§ 1270.16 Suspension and termination of agreements.

The Secretary of Agriculture may conduct a referendum at any time, and shall hold a referendum on request of (a) producers representing 10 percent or more of the number of producers voting in, or (b) producers owning 10 percent of the sheep or goats, as the case may be, represented in the referendum approving the agreement, to determine whether such producers favor the termination or suspension of the agreement. The Secretary shall suspend or terminate such agreement 6 months after the Secretary determines that suspension or termination of the agreement is approved or favored by a majority of the eligible producers voting in such referendum or who produced more than 50 percent of the volume of the sheep or goats, as the case may be, produced by the producers voting in the referendum.

§ 1270.17 Instructions and forms.

The Deputy Administrator is hereby authorized to prescribe additional instructions and forms not inconsistent with the provisions of this subpart to govern the conduct of the referendum.

APPENDIX I—AGREEMENT BETWEEN THE AMERICAN SHEEP PRODUCERS COUNCIL, INC., AND THE U.S. DEPARTMENT OF AGRICULTURE

AGREEMENT

This agreement is between the U.S. Department of Agriculture and the American Sheep Producers Council, Inc., a nonprofit membership corporation organized under the laws of the State of Illinois (hereinafter referred to as "ASPC"), for the conduct by the ASPC of advertising and sales promotion programs and programs to develop and disseminate information on product quality, production management, and marketing improvement, on a national basis, for wool, sheep, or the products thereof. Such activities shall be financed by deductions from incentive payments to sheep producers made under the National Wool Act of 1954, as amended, (hereinafter referred to as "Act") (7 U.S.C. 1781 et seq.) for wool and sheep marketed during the period commencing January 1, 1978, and ending December 31, 1981.

WITNESSETH

Whereas, the U.S. Department of Agriculture has announced an incentive payment program to producers for wool and sheep marketed during 1978 and it is anticipated that similar programs will be instituted for subsequent marketing years (1979-1981) under the Act;

Whereas, section 708 of the Act authorizes the Secretary of Agriculture to enter into agreements with marketing cooperatives, trade associations or other organizations engaged or whose members are engaged in the handling of wool, sheep, or the products thereof, for the purpose of developing and conducting on a national, State, or regional basis, advertising and sales promotion programs and programs for the development and dissemination of information on product quality, production management, and marketing imporvement for wool, sheep, or the products thereof;

Whereas, section 708 of the Act also provides that the agreements may authorize pro rata deductions from the incentive payments made to sheep producers to defray the expenses for such advertising, sales promotion, and information dissemination programs and for the transfer of such monies to the agency designated in the agreement; and

Whereas, such programs for wool, sheep, or the products thereof have been conducted on a national basis since 1955 in accordance with agreements between the Secretary of Agriculture or his designee and the ASPC;

Now therefore, in order for the ASPC to continue such programs financed by pro rata deductions from incentive payments to sheep producers for the marketing years 1978-1981, the parties hereto agree as follows:

1. Whenever incentive payments are made to sheep producers under the Act, the Administrator, Agricultural Stablization and Conservation Service, U.S. Department of Agriculture, will make a pro rata deduction from such payments and at the direction of the Administrator, Agricultural Marketing Service, U.S. Department of Agriculture ("Administrator, AMS"), pay the amount so deducted to the ASPC to provide the funds necessary to defray the expenses of the ASPC authorized under this agreement. Deductions will be made only from incentive payments, if any, which are made to sheep producers for wool and sheep marketed during the years beginning January 1, 1978, and ending December 31, 1981. Deductions from incentive payments for marketings during calendar year 1978 shall be at the rate if 2½ cents per pound of shorn wool marketed and at a comparable rate, as determined by the Administrator, AMS, on unshorn lambs and yearlings (pulled wool) marketed; thereafter, the deductions shall be at such rates as the Administrator, AMS, and the ASPC may agree upon, but in no event shall the rates be in excess of the rates specified for calendar year 1978.

2. For each fiscal year (July 1-June 30) beginning July 1, 1978, until all funds transferred to the ASPC under this agreement are expended for programs authorized under this agreement, the ASPC shall develop and submit for approval to the Administrator, AMS, proposed plans and budgets for (a) advertising and sales promotion programs, and (b) programs to develop and disseminate information on product quality, production management, and marketing improvement it intends to undertake for wool, sheep, or the products thereof. Each submission shall describe the annual plan of operation, commodities to be covered by

each program, the proposed media, and other methods which the ASPC intends to use in carrying out such programs and the benefits expected to be derived by sheep producers on a national basis. Amendments in program plans and budgets shall be submitted for approval as specified by the Administrator, AMS. Following approval of the general program and budget by the Administrator, AMS, the Administrator, AMS, may require the ASPC to submit plans for specific projects as well as proposed contracts and agreements for approval before the ASPC enters into agreements with advertising and promotional agencies, radio and television stations, and others to effectuate its programs.

3. The ASPC shall furnish the Administrator, AMS, with a statement of its assets and liabilities as of the end of each fiscal year within 60 days after the end of the fiscal year. The ASPC shall also furnish the Administrator, AMS, with an annual report of is activities and a copy of an audit, prepared by an independent Certified Public Accountant, of its operations for each fiscal year, as soon as possible, but not later than 6 months after the end of the fiscal year, and with such other reports and information as the Administrator, AMS, may from time to time request. The ASPC shall keep accurate records of all its transactions, and these records shall be subject to inspection and audit by representatives of the U.S. Department of Agriculture at all times during regular business hours from the date of this agreement until 3 years after the ASPC has completed performance of all contracts made and obligations incurred hereunder.

4. Either party may terminate this agreement with respect to the continuation of all programs hereunder by delivering, or mailing by registered mail, a written notice of such termination effective on the date to be specified therein, but not earlier than 30 days after giving of such notice. If on or after January 1, 1979, the Administrator, AMS, determines upon petition, or referendum of the sheep producers, or otherwise, that this agreement is no longer favored by the required number of sheep producers, the Administrator, AMS, shall terminate the agreement. After the termination of the agreement by either party, no deductions from incentive payments to producers shall be made to defray the expenses of the ASPC under this or prior agreements except as the Administrator, AMS, determines necessary or desirable to effectuate the termination of ASPC's activities and liquidation of the ASPC's funds.

5. Funds obtained by the ASPC pursuant to prior agreements and unobligated on the date when this agreement becomes effective shall become subject to the terms and conditions of this agreement and be available to finance programs authorized by this agreement.

6. Upon completion of all programs under this and prior agreements or upon termination of this agreement by either party, all funds of the ASPC derived from deductions from incentive payments (including interest earned thereon) remaining unobligated in the hands of the ASPC shall be returned to the U.S. Department of Agriculture, together with a statement explaining the various items which entered into the amount being returned. If the ASPC received funds from sources other than the U.S. Department of Agriculture, pursuant to this agreement, the ASPC shall return to the U.S. Department of Agriculture the same proportion of such unobligated funds as the funds contributed by the U.S. Department of Agriculture bear to all funds received by the ASPC. A final statement of the assets and liabilities of the ASPC shall be furnished to the U.S. Department of Agriculture within 60 days after such completion or termination becomes effective.

7. Any amendments or additions to the charter or bylaws of the ASPC shall be subject to the approval of the Administrator, AMS.

8. The authority reserved to the Administrator, AMS, under the provisions of this agreement may be exercised by an official or officials of the Department of Agriculture designated by the Administrator, AMS.

9. During the performance of this agreement, it is further agreed that the ASPC shall comply with the following provisions:

(a) Equal opportunity. (1) The ASPC will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin in regard to any position for which the employee or applicant is qualified. The ASPC will take affirmative action to insure that applicants are employed, and that employees are treated during employment without regard to any of the factors enumerated above. Such action shall include, but not be limited to, the following: Employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The ASPC agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Administrator, AMS, setting forth the provisions of this nondiscrimination clause.

(2) The ASPC will, in all solicitations or advertisement for employees, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The ASPC will send to each labor union or representatives of workers with

which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Administrator, AMS, advising the labor union or workers' representative of the ASPC's commitments under section 202 of the Executive Order No. 11246 of September 24, 1965, as amended, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The ASPC will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules and regulations, and relevant orders of the Secretary of Labor.

(5) The ASPC will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Administrator AMS, and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the ASPC's noncompliance with the nondiscrimination clauses of this agreement or with any of such rules, regulations, or orders, this agreement may be cancelled, terminated or suspended in accordance with procedures authorized in Executive Order No. 11246, of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in the Executive Order No. 11246 of September 24, 1965, as amended, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The ASPC will include the provisions of paragraphs (1) through (7) in every contract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each contractor or vendor. The ASPC will take such action with respect to any contract or purchase order as the Administrator, AMS, may direct as a means of enforcing such provisions including sanctions for noncompliance; *Provided, however,* That in the event the ASPC becomes involved in, or is threatened with, litigation with a contractor or vendor as a result of such direction by the Administrator, AMS, the ASPC may request the United States to enter into such litigation to protect the interest of the United States.

(b) Disabled veterans and veterans of the Vietnam era (applicable to all contracts and subcontracts of $10,000 or more as required by the regulations of the Secretary of Labor). (1) The ASPC will not discriminate against any employee or applicant for employment because he or she is a disabled veteran or veteran of the Vietnam era in regard to any position for which the employee or applicant for employment is qualified. The ASPC agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination based upon their disability or veteran status in all employment practices such as the following: employment upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

(2) The ASPC agrees that all suitable employment openings of the ASPC which exist at the time of the execution of this agreement and those which occur during the performance of this agreement, including those not generated by this agreement and including those occurring at an establishment of the ASPC other than the one wherein the agreement is being performed, shall be listed at an appropriate local office of the State employment service system wherein the opening occurs. The ASPC further agrees to provide such reports to such local office regarding employment openings and hires as may be required.

(3) Listing of employment openings with the employment service system pursuant to this clause shall be made at least concurrently with the use of any other recruitment source or effort and shall involve the normal obligations which attach to the placing of a bona fide job order, including the acceptance of referrals of veterans and nonveterans. The listing of employment openings does not require the hiring of any particular job applicant or from any particular group of job applicants, and nothing herein is intended to relieve the ASPC from any requirements in Executive Orders or regulations regarding nondiscrimination in employment.

(4) The reports required by paragraph (2) of this clause shall include, but not be limited to, periodic reports which shall be filed at least quarterly with the appropriate local office. Such reports shall indicate, (i) the number of individuals hired during the reporting period, (ii) the number of nondisabled veterans of the Vietnam era hired a, (iii) the number of disabled veterans of the Vietnam era hired, and (iv) the total number of disabled veterans hired. The reports should include covered veterans hired for on-the-job training under 38 U.S.C. 1787. The ASPC shall submit such reports within 30 days after the end of each reporting period wherein any performance is made under this agreement. The ASPC shall maintain copies of the reports submitted until 3 years after ASPC has completed performance of all contracts made and obliga-

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tions incurred under this agreement, during which time these reports and related documentation shall be made available, upon request, for examination by any authorized representatives of the Administrator, AMS, or of the Secretary of Labor. Documentation would include personnel records respecting job openings, recruitment, and placement.

(5) Whenever the ASPC becomes contractually bound to the listing provisions of this clause, it shall advise the employment service system in Colorado of its name and hiring location. As long as the ASPC is contractually bound to these provisions and has so advised the State system, there is no need to advise the State system of subsequent agreements. The ASPC may advise the State system when it is no longer bound by this clause.

(6) The provisions of paragraphs (2), (3), (4), and (5) of this clause do not apply to openings which the ASPC proposes to fill from within his own organization or to fill pursuant to a customary and traditional employer-union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of his own organization or employer-union arrangement for that opening.

(7) As used in this clause: (i) "All suitable employment openings" includes, but is not limited to, openings which occur in the following job categories: production and nonproduction; plant and office; laborers and mechanics; supervisory and nonsupervisory; technical; and executive, administrative, and professional openings that are compensated on a salary basis of less than $25,000 per year. This term includes full-time employment, temporary employment of more than 3 days duration, and part-time employment. It does not include openings which the ASPC proposes to fill from within its own organization or to fill pursuant to a customary and traditional employer-union hiring arrangement nor openings in an educational institution which are restricted to students of that institution. Under the most compelling circumstances, an employment opening may not be suitable for listing, including such situations where the needs of the Government cannot reasonably be otherwise supplied, where listing would be contrary to national security, or where the requirement of listing would otherwise not be for the best interest of the Government.

(ii) "Appropriate office of the State employment service system" means the local office of the Federal/State national system of public employment offices with assigned responsibility for serving the area where the employment opening is to be filled, including the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

(iii) "Openings which the ASPC proposes to fill from within its own organization" means employment openings for which no consideration will be given to persons outside the ASPC organization (including any affiliates) and includes any openings which the ASPC proposes to fill from regularly established "recall" lists.

(iv) "Openings which the ASPC proposes to fill pursuant to a customary and traditional employer-union hiring arrangement" means employment openings which the ASPC proposes to fill from union halls, which is part of the customary and traditional hiring relationship which exists between the ASPC and representatives of its employees.

(8) The ASPC agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Vietnam Era Veterans Readjustment Assistance Act.

(9) In the event of the ASPC's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

(10) The ASPC agrees to post in conspicuous places available to employees and applicants for employment notices in a form to be prescribed by the Director of the Office of Federal Contract Compliance Programs, Department of Labor, provided by or through the Administrator, AMS. Such notice shall state the ASPC's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era for employment, and rights of applicants and employees.

(11) The ASPC will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding that the ASPC is bound by terms of the Act and is committed to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era.

(12) The ASPC will include the provisions of this clause in every subcontrct or purchase order of $10,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to the Act, so that such provisions will be binding upon each subcontractor or vendor. The ASPC will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs, Department of Labor, may direct to enforce such provisions, including action for noncompliance.

(c) Handicapped workers (applicable to all contracts and subcontracts of $2,500 or more as required by the regulations of the

Secretary of Labor). (1) The ASPC will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The ASPC agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment, upgrading, demotion or transfer recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship.

(2) The ASPC agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Rehabilitation Act of 1973, as amended.

(3) In the event of the ASPC's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

(4) The ASPC agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, Office of Federal Contract Compliance Programs, Department of Labor, provided by or through the Administrator, AMS. Such notices shall state the ASPC's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.

(5) The ASPC will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the ASPC is bound by the terms of section 503 of the Act and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.

(6) The ASPC will include the provisions of this clause in every subcontract or purchase order of $2,500 or more unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 503 of the Act, so that such provisions will be binding upon each subcontractor or vendor. The ASPC will take such action with respect to any subcontract or purchase order as the Director, Office of Federal Contract Compliance Programs, may direct to enforce such provisions, including action for noncompliance.

(d) Convict labor. In connection with the performance of work under this agreement, the ASPC agrees not to employ any person undergoing sentence of imprisonment except as provided by Pub. L. 89-176, September 10, 1965, (18 U.S.C. 4082 (c)(2)) and Executive Order 11755, December 29, 1973.

(e) Utilization of minority business enterprises. (1) It is the policy of the Government that minority business enterprises shall have the maximum practicable opportunity to participate in the performance of Government contracts or agreements.

(2) ASPC agrees to use its best efforts to carry out this policy in the award of its subcontract to the fullest extent consistent with the efficient performance of the agreement. As used in the agreement, the term "minority business enterprise" means a business at least 50 percent of which is owned by minority group members or, in case of publicly owned businesses, at least 51 percent of the stock of which is owned by minority group members. For the purpose of this definition, minority group members are Negroes, Spanish-speaking American persons, American-Orientals, American Indians, American-Eskimos, and American Aleuts. ASPC may rely on written representation by subcontractors regarding their status as minority business enterprises in lieu of an independent investigation.

(f) Certification of nonsegregated facilities (applicable to contracts and subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause). By executing this agreement, the ASPC certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. ASPC certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The ASPC agrees that a breach of this certification is a violation of the Equal Opportunity clause of this agreement. As used in this certification the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restraurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis or race, creed, color, or national origin, because of habit, local custom, or otherwise. ASPC further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause; that it will retain such certifications in its files; and that it will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES

A Certification of Nonsegregated Facilities, as required by the May 9, 1967, order (32 FR 7439, May 19, 1967) on Elimination of Segregated Facilities, by the Secretary of Labor, must be submitted prior to the award of a subcontract exceeding $10,000 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e. quarterly, semiannually, or annually).

Whoever knowingly and willfully makes any false, fictitious, or fraudulent representation may be liable to criminal prosecution under 18 U.S.C. 1001 and 15 U.S.C. 714(a).

10. This agreement shall not become effective until and unless the Administrator, AMS, has determined on the basis of a producer referendum, conducted pursuant to 7 CFR Chapter XI, Part 1270, Subpart A, that at least two-thirds of the total number of eligible producers voting or producers owning two-thirds of the volume of sheep represented in such referendum approve this agreement.

[43 FR 32122, July 25, 1978]

PART 1290—REFERENDA PROCEDURES

Subpart—Procedure for the Conduct of Referenda in Connection With Floral Research and Consumer Information Order

Sec.
1290.200 General.
1290.201 Definitions.
1290.202 Voting.
1290.203 Instructions.
1290.204 Subagents.
1290.205 Ballots.
1290.206 Referendum report.
1290.207 Confidential information.

Subpart—Rules of Practice Governing Proceedings on Petitions to Modify or To Be Exempted From an Order

1290.250 Words in the singular form.
1290.251 Definitions.
1290.252 Institution of proceeding.

AUTHORITY: Pub. L. 97-98, 7 U.S.C. 4301-4319.

SOURCE: 48 FR 51427, Nov. 9, 1983, unless otherwise noted.

Subpart—Procedure for the Conduct of Referenda in Connection With Floral Research and Consumer Information Order

§ 1290.200 General.

Referenda to determine whether eligible producers and importers favor the issuance, continuance, termination or suspension of a Floral Research and Consumer Information Order shall be conducted in accordance with this subpart.

§ 1290.201 Definitions.

As used in this subpart, terms shall have the same meaning as defined in the Act and order unless modified by this section or unless context otherwise requires:

(a) "Act" means the Floral Research and Consumer Information Act, Pub. L. 97-98, 97th Congress, approved December 22, 1981, 7 U.S.C. 4301-4319.

(b) "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead; and Department means the U.S. Department of Agriculture.

(c) "Administrator" means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(d) "Order" mean the order (including an amendment to an order) with respect to which the Secretary has directed that a referendum be conducted.

(e) "Referendum agent" means the individual or individuals designated by the Secretary to conduct the referendum.

(f) "Representative period" means the period designated by the Secretary pursuant to Section 1709 of the Act.

(g) "Person" means any individual, group of individuals, partnership, corporation, association, cooperative, or other entity. For the purpose of this definition, the term "partnership" includes, but is not limited to, (1) a husband and wife who have title to, or leasehold interest in, land as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property, and (2) so-called "joint ventures," wherein one or more parties to the agreement, informal or otherwise, contributed capital and others contribute labor, management, equipment, or other services, or any variation of such contributions by two or more parties, so that it results in the growing or importing of flowers and plants for market and the authority to transfer title to the flowers and plants so produced or imported.

(h) "Flowers and plants" means those types or varieties of potted flowering plants and foliage plants (plus plant material used in their propagation) used primarily for interior decoration, and all cut flowers and all plant material used in the propagation of cut flowers. It does not include bedding plants, exterior landscape plants, or any other exterior plant material.

(i) Under this subpart, "eligible producer" means any person who produces domestically flowers and plants for interior use, with total sales thereof exceeding $100,000 during the 12 consecutive months of the representative period and who: (1) Owns and farms land (or a greenhouse), resulting in the ownership of the flowers and plants produced there; (2) rents and farms land, resulting in the ownership of all or a portion of the flowers and plants produced thereon; (3) owns land which the person does not farm and, as rental for such land, obtains the ownership of a portion of the flowers and plants produced thereon; or (4) is a party in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce flowers and plants who share the risk of loss and receive a share of the flowers and plants produced. No other acquisition of legal title to flowers and plants shall be deemed to result in persons becoming producers.

(j) under this subpart, "eligible importer" means any person engaged in the importation of flowers and plants with total sales thereof exceeding $100,000 during the 12 consecutive months of the representative period. An importer is any person responsible for making the first sales transaction of commodities originating outside the United States once they are released from Customs by the U.S. Customs Service. Among those included as "eligible importers" are agents, consignees or brokers, acting on behalf of foreign producers or foreign exporters, who make the first sales transaction which introduces flowers and plants into commerce upon release by the Customs Service.

(k) For the purpose of determining whether a producer or importer is eligible to vote in a referendum under this subpart, "total sales" is defined as a producer's or importer's total dollar amount of sales of flowers and plants primarily used for interior decoration. Specifically excluded are the sales of plants likely to be used outdoors, such as nursery, vegetable, and bedding plants. Also excluded are the sales of accessory items, such as decorative baskets and ceramic pots, that are not necessary to the sale of flowers and plants, and have usefulness independent of the commodities they are sold with. For the purpose of this section, a producer's or importer's total sales shall include, in those cases in which the producer or importer is an individual, sales attributable to such person's spouse, children, grandchildren, and parents; in those cases in which the producer or importer is a partnership or a member of a partnership, sales attributable to the other partners; and, in those cases in which the producer or importer is a corporation, sales attributable to any corporate subsidiaries of which such corporation owns 50 per centum or more of the stock, or if such subsidiaries are not corporations, subsidiaries which are controlled by such corporation. In addition, in determining a producer's or importer's total sales, the sales of any corporation in which such producer or importer owns 50 per centum or more of the stock shall be attributed to such producer or importer. For these purposes stock in the same corporation which is owned by such producer's or importer's spouse, children, grandchildren, parents, partners, and any corporation 50 per centum or more of whose stock is owned by the producer or importer shall be treated as owned by the producer or importer.

(l) "Floraboard" means the administrative board provided for under section 1701 of the Act.

§ 1290.202 Voting.

(a) Only a person who is an eligible producer or eligible importer, as defined in this subpart, at the time of the referendum and during the representative period, shall be entitled to a vote in the referendum. However, each such party in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce flowers and plants, in which each has a proprietary interest, including sharing in the risk of loss in the flowers and plants produced by the venture, shall be entitled to one vote in the referendum covering only his or her share of the ownership of the flowers and plants resulting from such venture.

(b) Proxy voting is not authorized but an officer or employee of a corporate eligible producer or importer, or an administrator, executor, or trustee of an eligible producing or importing estate may cast a ballot on behalf of such producer, importer or estate. Any individual so voting in a referendum shall certify that he is an officer or employee of the eligible producer or importer, or an administrator, executor, or trustee of an eligible producing or importing estate, and that he has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) Each eligible producer and importer shall be entitled to cast only one ballot in the referendum.

§ 1290.203 Instructions.

The referendum agent shall conduct the referendum, in the manner herein provided, under supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the time of commencement and termination of the period of the referendum, and the time prior to which all ballots must be cast.

(b) Determine whether ballots may be cast by mail, at polling places, at meetings of producers or importers, or by any combination of the foregoing.

(c) Provide ballots and related material to be used in the referendum. Ballot material shall provide for recording essential information including that needed for ascertaining (1) whether the person voting, or on whose behalf the vote is cast, is an eligible voter, (2) the cumulative total acreage or square footage of flowers and plants produced by the voting producer during the representative period with the total sales value thereof, (3) the total quantity and total sales value of flowers and plants imported during the representative period, and (4) in a joint venture, names of the parties and each one's share of ownership of the resulting flowers and plants.

(d) Give reasonable advance notice of the referendum (1) by utilizing without advertising expense available media or public information sources (including but not limited to, press and radio facilities) announcing the dates, places, or methods of voting, eligibility requirements, and other pertinent information, and (2) by such other means as said agent may deem advisable.

(e) Make available to eligible producers and importers instructions on voting, appropriate ballot and certification forms, and, except in the case of a referendum on the termination or continuance of an order, a summary of the terms and conditions of the order: Except that no person who claims to be eligible to vote shall be refused a ballot.

(f) If ballots are to be cast by mail, cause all the material specified in paragraph (e) of this section to be mailed to each eligible producer and importer whose name and address is known to the referendum agent.

(g) If ballots are to be cast at polling places or meetings, determine the necessary number of polling or meeting places, designate them, announce the time of each meeting or the hours during which each polling place will be open, provide the material specified in paragraph (e) of this section, and provide for appropriate custody of ballot forms and delivery to the referendum agent of ballots cast.

(h) At the conclusion of the referendum, canvass the ballots, tabulate the results, and except as otherwise directed, report the outcome to the Administrator and promptly thereafter submit the following:

(1) All ballots received by the agent and appointees, together with a certificate to the effect that the ballots forwarded are all of the ballots cast and received by such persons during the referendum period;

(2) A list of all challenged ballots deemed to be invalid; and

(3) A tabulation of the results of the referendum and a report thereon, including a detailed statement explaining the method used in giving publicity to the referendum and showing other information pertinent to the manner in which the referendum was conducted.

§ 1290.204 Subagents.

The referendum agent may appoint any person or persons deemed necessary or desirable to assist said agent in performing his functions hereunder. Each person so appointed may be authorized by said agent to perform, in accordance with the requirements herein set forth, any or all of the following functions (which, in the absence of such appointment, shall be performed by said agent):

(a) Give public notice of the referendum in the manner specified herein;

(b) Preside at a meeting where ballots are to be cast or as poll officer at a polling place;

(c) Distribute ballots and the aforesaid texts to eligible producers and importers and receive any ballots which are cast; and

(d) Record the name and address of each person casting a ballot with said subagent and check the eligibility of such person to vote in the referendum.

§ 1290.205 Ballots.

The referendum agent and his appointees shall accept all ballots cast; but, should they, or any of them, deem that a ballot should be challenged for any reason, said agent or appointee shall endorse above his signature, on said ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefor, the results of any investigations made with respect thereto, and the disposition thereof. Ballots invalid under this subpart shall not be counted.

§ 1290.206 Referendum report.

Except as otherwise directed, the Administrator shall prepare and submit to the Secretary a report on results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to analysis of the referendum and its results.

§ 1290.207 Confidential information.

All ballots cast and the contents thereof (whether or not relating to the identity of any person who voted or the manner in which any person voted) and all information furnished to, compiled by, or in possession of, the referendum agent shall be treated as confidential except that the issuance of general statements regarding referendum results shall not be prohibited provided that information furnished by any one person is not disclosed.

Subpart—Rules of Practice Governing Proceedings on Petitions to Modify or To Be Exempted From an Order

§ 1290.250 Words in the singular form.

Words in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 1290.251 Definitions.

As used in this subpart, the terms as defined in the Act shall apply with equal force and effect. In addition unless the context otherwise requires:

(a) The term "Act" means the Floral Research and Consumer Information Act, Pub. L. 97-98, 97th Congress, approved December 22, 1981, 7 U.S.C. 4301 to 4319;

(b) The term "Department" means the U.S. Department of Agriculture;

(c) The term "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereinafter be delegated, to act in the Secretary's stead;

(d) The term "judge" means any administrative law judge in the Office of Administrative Law Judges, U.S. Department of Agriculture;

(e) The term "Administrator" means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated, or may hereafter be delegated, to act in the Administrator's stead;

(f) The term "FEDERAL REGISTER" means the publication provided for by the Federal Register Act, approved July 26, 1935 (44 U.S.C. 1501 to 1511), and acts supplementing and amending it;

(g) The term "order" means any order or any amendment thereto which may be issued pursuant to the Act;

(h) The term "person" means any individual, group of individuals, partnership, corporation, association, cooperative, or other entity subject to an order or to whom an order is sought to be made applicable, or on whom an obligation has been imposed or is sought to be imposed under an order;

(i) The term "proceeding" means a proceeding before the Secretary arising under section 1714(a) of the Act;

(j) The term "hearing" means that part of the proceeding which involves the submission of evidence;

(k) The term "party" includes the Department;

(l) The term "hearing clerk" means the hearing clerk, U.S. Department of Agriculture, Washington, D.C.;

(m) The term "presiding officer" means the administrative law judge conducting a proceeding under this Act;

(n) The term "presiding officer's report" means the presiding officer's report to the Secretary and includes the presiding officer's proposed (1) findings of fact and conclusions with respect to all material issues of fact, law or discretion, as well as the reasons or basis therefor, (2) order, and (3) rulings on findings, conclusions and orders submitted by the parties;

(o) The term "petition" includes an amended petition.

§ 1290.252 Institution of proceeding.

(a) *Filing and service of petitions.* Any person subject to an order desiring to complain that any order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law, shall file with the hearing clerk, five copies of a petition in writing addressed to the Secretary, requesting a modification of such order or to be exempted from such order. Promptly upon receipt of the petition, the hearing clerk shall transmit a true copy thereof to the Administrator and the General Counsel, respectively.

(b) *Contents of petitions.* A petition shall contain:

(1) The correct name, address, and principal place of business of the petitioner. If the petitioner is a corporation, such fact shall be stated, together with the name of the State of incorporation, the date of incorporation, and the names, addresses, and respective positions held by its officers and directors; if an unincorporated association, the names and addresses of its officers, and the respective positions held by them; if a partnership, the name and address of each partner;

(2) Reference to the specific terms or provisions of the order, or the interpretation or application thereof, which are complained of;

(3) A full statement of the facts (avoiding a mere repetition of detailed evidence) upon which the petition is

based, and which it is desired that the Secretary consider, setting forth clearly and concisely the nature of the petitioner's business and the manner in which petitioner claims to be affected by the terms or provisions of the order or the interpretation or application thereof, which are complained of;

(4) A statement of the grounds on which the terms or provisions of the order, or the interpretation or application thereof, which are complained of, are challenged as not in accordance with law;

(5) Requests for the specific relief which the petitioner desires the Secretary to grant.

(c) *An application to dismiss petition—Filing, contents, and responses thereto.* If the Administrator is of the opinion that the petition, or any portion thereof, does not substantially comply, in form or content, with the Act or with the requirements of paragraph (b) of this section, the Administrator may, within 30 days after the filing of the petition, file with the hearing clerk an application to dismiss the petition, or any portion thereof, on one or more of the grounds stated in this paragraph. Such application shall specify the grounds of objection to the petition and if based, in whole or in part, on allegations of fact not appearing on the face of the petition, shall be accompanied by appropriate affidavits or documentary evidence substantiating such allegations of fact. The application may be accompanied by a memorandum of law. Upon receipt of such application, the hearing clerk shall cause a copy thereof to be served upon the petitioner, together with a notice stating that all papers to be submitted in opposition of such application, including any memorandum of law, must be filed by the petitioner with the hearing clerk not later than 20 days after the service of such notice upon the petitioner. Upon the expiration of the time specified in such notice, or upon receipt of such papers from the petitioner, the hearing clerk shall transmit all papers which have been filed in connection with the application to the Secretary for his consideration.

(d) *Further proceedings.* Further proceedings on petitions to modify or to be exempted from plans shall be governed by §§ 900.52(c)(2) through 900.71 of this title (Rules of Practice Governing Proceedings on Petitions To Modify or to Be Exempted From Marketing Orders) and as may hereafter be amended, and the same are incorporated herein and made a part hereof by reference. However each reference to "marketing order" in the title shall mean "order."

CHAPTER XIV—COMMODITY CREDIT CORPORATION, DEPARTMENT OF AGRICULTURE

CROSS REFERENCE: For regulations relative to standards, inspections, and marketing practices, see Chapter I of this title.

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SUBCHAPTER A—GENERAL REGULATIONS AND POLICIES

PART 1402—POLICY FOR CERTAIN COMMODITIES AVAILABLE FOR SALE

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1402.101 General.
1402.102 Submission of offers, terms and conditions.
1402.103 Information.
1402.104 Other sales.

AUTHORITY: Sec. 4, 62 Stat. 1070, as amended; 15 U.S.C. 714b. Interpret or apply sec. 407, 63 Stat. 1055, as amended, 7 U.S.C. 1427.

SOURCE: 19 FR 6669, Oct. 16, 1954, unless otherwise noted. Redesignated at 28 FR 579, Jan. 23, 1963.

§ 1402.101 General.

To facilitate trade in private trade channels, the Commodity Credit Corporation will disseminate general sales offering information via press release. Since carrying charges must be incorporated in statutory minimum prices for certain commodities and since such carrying charges are conveniently accrued on a monthly basis, a Monthly Sales List will be published in press release form. The Monthly Sales List will be completely revised and republished by press release at the beginning of each month and amended as necessary during the month. The Commodity Credit Corporation reserves the right to make any amendments deleting or adding to the provisions of the Monthly Sales List or changing prices or methods of sale, including but not limited to, changes in the minimum price percentage, markups and carrying charges. These lists are issued for the purpose of public information and do not constitute an offer to sell by the Commodity Credit Corporation or an invitation for offers to purchase from the Corporation. The Monthly Sales List will set forth either the prices or the pricing basis at which commodity holdings of the Commodity Credit Corporation are available for sale for domestic unrestricted use, for export, and redemption of payment-in-kind certificates. Information concerning barter and credit will also be included. To be placed on the mailing list for the Monthly Sales List press release, applications should be made to the Director, Inventory Managment Division, ASCS, USDA, Washington, DC 20013.

[44 FR 37600, June 28, 1979]

§ 1402.102 Submission of offers, terms and conditions.

The Commodity Credit Corporation will entertain offers from prospective buyers for the purchase of any commodities on the current lists. Offers accepted by Commodity Credit Corporation will be subject to terms and conditions prescribed by the Corporation. These terms include, among others, payment by cash or irrevocable letter of credit before delivery of the commodity, removal of the commodity from Commodity Credit Corporation storage within a reasonable period of time, and, in sales for export, proof of exportation.

§ 1402.103 Information.

The terms and conditions of sale with respect to any commodity appearing on the monthly lists will be furnished upon request, addressed to the Agricultural Stabilization and Conservation Service, United States Department of Agriculture, Washington, DC 20250.

§ 1402.104 Other sales.

The general policy of Commodity Credit Corporation of making sales on a competitive or negotiated basis will continue to apply to all sales not covered by this announcement. Inquiries with respect to such sales may be addressed to the Agricultural Stabilization and Conservation Service, United States Department of Agriculture, Washington, DC 20250.

PART 1403—DEBT SETTLEMENT POLICIES AND PROCEDURES

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1403.19 Reporting of discharged debts to IRS.
1403.20 Referral of debts to private collection agencies.

AUTHORITY: 15 U.S.C. 714b and 714c.

SOURCE: 54 FR 52878, Dec. 22, 1989, unless otherwise noted.

§ 1403.1 Applicability.

Except as may otherwise be provided by statute, this part sets forth the manner in which the Commodity Credit Corporation (CCC) will settle and collect debts by and against CCC arising out of domestic transactions.

§ 1403.2 Administration.

The regulations in this part will be administered under the general supervision and direction of the Executive Vice President, CCC and the Administrator, Agricultural Stabilization and Conservation Service (ASCS).

§ 1403.3 Definitions.

The following definitions shall be applicable to this part:

Administrative charges means the additional costs of processing delinquent debts against the debtor, to the extent such costs are attributable to the delinquency. Such costs include, but are not limited to, costs incurred in obtaining a credit report, costs of employing commercial firms to locate debtor, costs of employing contractors for collection services, costs of selling collateral or property to satisfy the debt.

Administrative offset means deducting money payable or held by the United States Government, or any agency thereof, to satisfy in whole or in part a debt owed the Government, or any agency thereof.

ASCS means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture (USDA).

Carrier means a company or person, including but not limited to railroads, motor carriers, ocean carriers or piggyback companies, providing transportation of USDA commodities or other transportation related service for compensation.

Certified financial statement means an account of the assets, liabilities, income and expenses of a debtor, executed in accordance with generally accepted accounting principles and attested to as accurate by the preparer, under penalty of perjury.

CCC means the Commodity Credit Corporation.

Claim means an amount of money or property which has been determined by CCC, after a notice of delinquency and a demand for the payment of the debt has been made by CCC, to be owed to CCC by any person other than a Federal agency.

Credit reporting agency means:

(1) A reporting agency as defined at 4 CFR 102.5(a), or

(2) Any entity which has entered into an agreement with USDA concerning the referral of credit information.

Debt means any amount owed to CCC or owed by CCC which has not been satisfied through payment or otherwise.

Debt record refers to the account, register, balance sheet, file, ledger, data file, or similar record of debts owed to CCC, ASCS, or any other Government Agency with respect to which collection action is being pursued, and which is maintained in an ASCS office.

Delinquent debt means: (1) Any debt owed to CCC that has not been paid by the date specified in the applicable statute, regulation, contract, or agreement; or (2) Any debt that has not been paid by the date specified in an initial notification of indebtedness mailed or hand-delivered pursuant to § 1403.4.

Discharged debt means any debt, or part thereof, which CCC has determined is uncollectible.

IRS means the Internal Revenue Service.

Late payment interest rate means the amount of interest charged on delinquent debts and claims. The late payment interest rate shall be determined as of the date a debt becomes delinquent and shall be equal to the rate of interest assessed under the Prompt Payment Act.

Person means an individual, partnership, association, corporation, estate or trust, or other business enterprise or other legal entity and, whenever applicable, the Federal Government or a State government, or any agency thereof.

Salary offset means the deduction of money from the current pay account of a present or former Government employee payable by the United States Government to, or held by the Government for, such person to satisfy a debt that person owes the Government.

Settlement means any final disposition of a debt or claim.

Shipment means a carload, truckload, containerload, or other conveyance load of freight shipped from one location in one calendar day by one shipper for delivery. It shall be moved in accordance with the terms of a commercial or ocean bill of lading, or other similar agreement between the carrier and USDA.

System of records means a group of any records under the control of CCC or ASCS from which information is retrieved by the name of the individual, organization or other entity or by some identifying number, symbol, or other identification assigned to the individual, organization or other entity.

Withholding means the taking of action to temporarily prevent the payment of some or all amounts to a debtor under one or more contracts or programs.

§ 1403.4 Demand for payment of debts.

(a) When a debt is due CCC, an initial written demand for payment of such amount shall be mailed or hand-delivered to the debtor. If the debt is not paid in full by the date specified in the initial demand letter, or if a repayment schedule acceptable to CCC has not been arranged with the debtor, the initial demand shall be followed by two subsequent written demands at approximately 30-day intervals, unless it is determined by CCC that further demands would be futile and the debtor's response does not require rebuttal. The initial or subsequent demand letters shall specify the following:

(1) The basis for and the amount of the debt determined to be due CCC, including the principal, applicable interest, costs and other charges;

(2) CCC's intent to establish an account on a debt record 30 days after the date of the letter, or other applicable period of time, if the debt is not paid within that time;

(3) The applicable late payment interest rate.

(i) If a late payment interest rate is specified in the contract, agreement or program regulation, the debtor shall be informed of that rate and the date from which the late payment interest has been accruing;

(ii) If a late payment interest rate is not specified in the contract, agreement or program regulation, the debtor shall be informed of the applicable late payment interest rate set out in § 1403.9.

(4) CCC's intent to collect the debt 30 days from the date of the initial demand letter, or other applicable period of time, by administrative offset from any CCC or ASCS payments due or to become due to the debtor, and that the claim may be reported to other agencies of the Federal government for offset from any amounts due or to become due to the debtor;

(5) If not previously provided, the debtor's right to request administrative review by an authorized CCC official, and the proper procedure for making such request. If the request relates to the:

(i) Existence or amount of the debt, it must be made within 15 days from the date of the letter;

(ii) Appropriateness of reporting to a credit reporting agency, it must be made within 30 days from the date of the letter; or

(iii) Appropriateness of referral to IRS for tax refund offset, it must be made within 60 days from the date of the letter.

(6) The debtor's right to a full explanation of the debt and to dispute any information in the records of CCC concerning the debt;

(7) That CCC maintains the right to initiate legal action to collect the amount of the debt;

(8) That if any portion of the debt remains unpaid or if a repayment schedule satisfactory to CCC has not been arranged 90 days after the due date, an additional interest rate shall be assessed on the unpaid balance of the debt as prescribed in § 1403.9(e);

(9) CCC's intent, if applicable, under § 1403.16, to report any delinquent debt to a credit reporting agency no sooner than 60 days from the date of the letter;

(10) CCC's intent, if applicable, under § 1403.18, to refer any delinquent debt to the IRS, no sooner than 60 days from the date of the letter, to be considered for offset against any tax refund due or to become due the debtor.

(b) When CCC deems it necessary to protect the Government's interest, written demand may be preceded by other appropriate actions.

§ 1403.5 Collection by payment in full.

Except as CCC may provide in accordance with § 1403.6, CCC shall collect debts owed to the Government, including applicable interest, penalties, and administrative costs, in full, whenever feasible whether the debt is being collected by administrative offset or by another method, including voluntary payment. If a debt is paid in one lump sum after the due date, CCC will impose late payment interest, as provided in § 1403.9, unless such interest is waived as provided in § 1403.10.

§ 1403.6 Collection by installment payments.

(a) Payments in installments may be arranged, at CCC's discretion, if a debtor furnishes satisfactory evidence of inability to pay a claim in full by the specified date. The size and frequency of installment payments shall:

(1) Bear a reasonable relation to the size of the debt and the debtor's ability to pay; and

(2) Normally be of sufficient size and frequency to liquidate the debt in not more than three years.

(b) Except as otherwise determined by CCC, no installment arrangement will be considered unless the debtor submits a certified financial statement which reflects the debtor's assets, liabilities, income, and expenses. The financial statement shall not be required to be submitted sooner than 15 business days following its request by CCC.

(c) All installment payment agreements shall be in writing and may require the payment of interest at the late payment interest rate in effect on the date such agreement is executed. The installment agreement shall specify all the terms of the arrangement and include provision for accelerating the debt in the event the debtor defaults. A confession of judgment provision may be included in the agreement.

(d) CCC may deem a repayment plan to be abrogated if the debtor fails to comply with its terms.

(e) If the debtor's financial statement or other information discloses the ownership of assets which are not encumbered, the debtor may be required to secure the payment of an installment note by executing a security agreement and financing agreement which provides CCC a security interest in the assets until the debt is paid in full.

(f) If the debtor owes more than one debt to CCC, CCC may allow the debtor to designate the manner in which a voluntary installment payment is to be applied. If the debtor does not designate the application of a voluntary installment or partial payment, the payment will be applied to such debts as determined by CCC.

§ 1403.7 Collection by administrative offset.

(a) The provisions of this section shall apply to all debts due CCC except as otherwise provided in this part and part 1404 of this Chapter. This section is not applicable to:

(1) CCC requests for administrative offset against money payable to a debtor from the Civil Service Retirement and Disability Fund and CCC requests for salary offset against a present or former employee of the Federal Government which shall be made in accordance with regulations at part 3 of this title;

(2) CCC requests for administrative offset against a Federal income tax refund payable to a debtor which shall be made in accordance with § 1403.18;

(3) Cases in which CCC must adjust, by increasing or decreasing, a payment which is to be paid under a contract in order to properly make other payments due by CCC; and

(4) Any case in which collection of the type of debt involved by administrative offset is explicitly provided for or prohibited by statute.

(b) Debts due CCC may be collected by administrative offset from amounts payable by CCC when:

(1) The debtor has been provided written notification of the basis and amount of the debt and has been given an opportunity to make payment. Such written notification and opportunity includes notice of the right to pursue an administrative appeal in accordance with Part 780 of this Title or any other applicable appeal procedures, if not previously provided;

(2) The debtor has been provided an opportunity to request to inspect and copy the records of CCC related to the debt;

(3) The debtor has been notified in writing that the debt will be collected by administrative offset if not paid; and

(4) The debt has not been delinquent for more than ten years or legal action to enforce the debt has not been barred by an applicable period of limitation, whichever is later.

(c) Administrative offset shall also be effected against amounts payable by CCC:

(1) When requested or approved by the Department of Justice; or

(2) When a person is indebted under a judgment in favor of CCC.

(d) Debts due CCC from carriers for overcharges shall be offset against amounts due such carriers under freight bills involving shipments if:

(1) The carrier, without reasonable justification, has declined payment of the debt or has failed to pay the debt after being given a reasonable opportunity to make payment; and

(2) The period of limitation prescribed at 49 U.S.C. 11706(f) has not expired.

(e) Debts due CCC from carriers for loss or damage shall be offset against amounts due such carriers under freight bills involving shipments if:

(1) Timely demand for payment was made on the carrier;

(2) The carrier has declined payment of the debt without reasonable justification or has ignored the claim; and

(3) The period of limitation prescribed at 49 U.S.C. 11707(e) has not expired.

(f) Any overcharge or loss or damage debt due CCC on which the applicable period of limitation has run may be offset against any amounts owing by CCC to the carrier which are subject to a defense of limitation.

(g) A payment due any person may be offset when there is a breach of a contract or a violation of CCC program requirements, and offset is considered necessary by CCC to protect the financial interests of the Government.

(h) In the case of any procurement contract with CCC which provides for invoicing at the time of shipment with delivery to be made at designated destination points when:

(1) Payment is made to the contractor prior to receipt of evidence of delivery, and

(2) CCC thereafter determines that the Contractor is indebted to CCC because of losses sustained from shortage, damage to or deterioration of the commodity while in transit and prior to delivery, CCC may offset such indebtedness against amounts due and payable to the Contractor under any other contract with CCC providing the Contractor has not assigned the pro-

ceeds of such contract in accordance with part 1404 of this chapter.

(i) CCC may effect administrative offset against a payment to be made to a debtor prior to completion of the procedures required by (b)(1-3) of this section if:

(1) Failure to take the offset would substantially prejudice CCC's ability to collect the debt; and

(2) The time before the payment is to be made does not reasonably permit the completion of those procedures.

(j)(1) Debts due any agency other than CCC shall be offset against amounts payable by CCC to a debtor when an agency of the U.S. Government has submitted a written request for offset which is mailed or hand-delivered to the appropriate ASCS State office, Kansas City Management Office or Kansas City Commodity Office. Such written request must:

(i) Bear the signature of an authorized representative of the requesting agency;

(ii) Include a certification that all requirements of the law and the regulations for collection of the debt and for requesting offset have been complied with;

(iii) State the name, address (including county), and, where legally available, the social security number or employer ID number of the debtor and a brief description of the basis of the debt, including identification of the judgment, if any.

(iv) State the amount of the debt separately as to principal, interest, penalties, and administrative costs. Interest, if any, shall be computed on a daily basis to a date shown in the request. The amount to be offset shall not exceed the principal sum owed by the debtor, plus interest computed in accordance with the request, and any late payment interest, penalties and administrative costs that have been assessed;

(v) Certify that the debtor has not filed for bankruptcy. If the debtor has filed for bankruptcy, a copy of the order of the bankruptcy court relieving the agency from the automatic stay must be included; and

(vi) State the name, address, and telephone number of a contact person within the agency and the address to which payment should be sent.

(2) Unless prohibited by law, the head of an agency, or a designee, may defer or subordinate in whole or in part the right of the agency to recover through offset all or part of any indebtedness to such agency, or may withdraw a request for offset. Notice of such action must be sent to the appropriate ASCS office.

(k)(1) After CCC has complied with the provisions of this part, CCC may request other agencies of the Government to offset amounts payable by them to persons indebted to CCC.

(2) In the case of a request to IRS for a tax refund offset, the provisions at § 1403.18 shall apply.

(l)(1) Debts shall be collected by offset in the following order of priority without regard to the date of the request for such collection:

(i) Debts to CCC.

(ii) Debts to other agencies of USDA as determined by CCC.

(iii) Debts to other government agencies as determined by CCC.

(2) In the case of multiple debts involving the same debtor, CCC may, at its discretion, deviate from the usual order of priority in applying recovered amounts to debts owed other agencies when considered to be in the Government's best interest. Such decision shall be made by CCC based on the facts and circumstances of the particular case.

(m)(1) No amounts payable to a debtor by CCC shall be paid to an assignee until there have been collected any amounts owed by the debtor except as provided in this subsection.

(2) A payment which is assigned in accordance with Part 1404 of this Chapter by execution of Form CCC-36 shall be subject to offset for any debt owed to CCC or ASCS without regard to the date notice of assignment was accepted by CCC or ASCS.

(3) A payment which is assigned in accordance with Part 1404 of this Chapter by execution of Form CCC-252 shall be offset:

(i) Against any debt of the assignor entered on the debt record of the applicable ASCS office prior to the filing of such form with CCC or ASCS, or

(ii) At anytime, regardless of the date of filing of such form with CCC or ASCS, if the debt which is the basis for the offset arises under the same contract under which the payment is earned by the assignor.

(4) Offset shall be made, if the Internal Revenue Service so requests or has served a Notice of Levy, of any amounts for which the assignor is indebted to the United States for taxes, for which a notice of lien was filed in accordance with the provisions of the Internal Revenue Code prior to the date the notice of assignment was accepted by CCC or ASCS. The burden of determining whether a notice of lien has been filed shall be upon the assignee.

(5) With respect to all other Federal agencies, offset shall be made of any amounts due any other Federal agency which are entered on the debt record of the appropriate ASCS office prior to the date the notice of assignment was accepted by CCC or ASCS.

(6) Any amount due and payable to the assignor which remains after deduction of amounts paid to the assignee shall be available for offset.

(n) Amounts recovered by offset for CCC and ASCS debts but later found not to be owed to the Government shall be promptly refunded.

(o) The debtor shall be notified whenever any offset action has been taken.

(p) Offsets made pursuant to this section shall not deprive a debtor of any right he might otherwise have to contest the debt involved in the offset action either by administrative appeal or by legal action.

(q) Any action authorized by the provisions of this section may be taken against amounts payable to a debtor who operates under more than one name, provided there is identical ownership, or CCC determines that the debtor has established an entity for the purpose of avoiding the payment of the claim or debt.

(r) The amount to be offset shall not exceed the actual or estimated amount of the debt, including interest, administrative charges, and penalties, unless the Department of Justice requests that a larger specified amount be offset.

(s) Offset action will not be taken against payments when:

(1) The payment represents loan or purchase proceeds for a commodity which is subject to the rights of the holder of a prior valid enforceable lien. However, any amount that exceeds the amount of the prior lien shall be available for offset.

(2) A debt has been discharged as provided in § 1403.15.

(3) The amount payable to the debtor is used to satisfy a prior lien on property pledged as collateral for a CCC loan or sold to CCC. However, any amount exceeding the amount of the prior lien shall be available for offset.

(4) CCC determines such action will unduly interfere with the administration of a CCC or ASCS program.

(5) The debt has been delinquent for more than ten years or legal action to enforce the debt due CCC is barred by an applicable period of limitation, whichever is later.

§ 1403.8 Withholding.

(a) Withholding of a payment prior to the completion of an applicable offset procedure may be made from amounts payable to a debtor by CCC to ensure that the interests of CCC and the United States will be protected as provided in this section.

(b) A payment may be withheld to protect the interests of CCC or the United States only if CCC determines that:

(1) There has been a serious breach of contract or violation of program requirements and the withholding action is considered necessary to protect the financial interests of CCC;

(2) There is substantial evidence of violations of criminal or civil frauds statutes and criminal prosecution or civil frauds action is of primary importance to program operations of CCC;

(3) Prior experience with the debtor indicates that collection will be difficult if amounts payable to the debtor are not withheld;

(4) There is doubt that the debtor will be financially able to pay a judgment on the claim of CCC;

(5) The facts available to CCC are insufficient to determine the amount to be offset or the proper payee;

(6) A judgment on a claim of CCC has been obtained; or

(7) Such action has been requested by the Department of Justice.

(c) Except for debts due CCC or ASCS, withholding action by CCC on amounts payable to debtors of other Government agencies may not be made unless requested by the Department of Justice.

§ 1403.9 Late payment interest and administrative charges.

(a)(1) The provisions of this section are applicable to all persons whose debt to CCC becomes delinquent after January 1, 1990, unless the debtor and CCC agree otherwise.

(2) Late payment interest provisions of this section shall not apply:

(i) To debts owed by Federal agencies and State and local governments. Interest on debts owed by such entities shall be charged in accordance with applicable statutes or, if none are applicable, at the rate of interest charged by the U.S. Treasury for funds borrowed by CCC on the day the debt became delinquent;

(ii) If an applicable statute, regulation, agreement or contract either prohibits the charging of such interest or specifies the interest or charges applicable to the debt involved;

(iii) If the late payment interest is waived by CCC.

(b) CCC will assess late payment interest on the full amount of delinquent debts. For purposes of this section, the term "full amount of the delinquent debt" means the sum of the principal, accrued regular loan interest or accrued program interest, and any other charges which are otherwise due and owing to CCC on the delinquent debt at the time the late payment interest is assessed, except as provided in paragraphs (a)(2) and (d)(3) of this section.

(c) The late payment interest shall be expressed as an annual rate of interest which CCC charges on delinquent debts. The late payment interest rate shall be equal to the rate of interest assessed under the Prompt Payment Act, determined as of the date specified in paragraphs (d)(1) and (d)(2) of this section.

(d)(1) When a debt results from a statute, regulation, contract or other agreement with specific provisions for late payment interest and payment due date, late payment interest shall accrue on the amount of the debt from the first day the debt became delinquent, unless otherwise provided by statute.

(2) With respect to debts not resulting from a statute, regulation, contract or agreement containing specific provisions for late payment interest and payment due date, late payment interest shall begin to accrue from the date on which notice of the debt is first mailed or hand-delivered to the debtor.

(3) The rate of late payment interest initially assessed will be fixed for the duration of the indebtedness, except when a debtor has defaulted on a repayment agreement and seeks to enter into a new agreement. CCC may then set a new rate of interest which reflects the late payment interest rate in effect at the time the new agreement is executed. All charges which accrued, but which were not collected under the defaulted agreement, shall be added to the principal to be paid under a new repayment agreement.

(4) The late payment interest on delinquent debts will accrue on a daily basis.

(e) Except as specified in paragraph (a)(2) of this section, an additional interest rate of three (3) percent per annum will be assessed on any portion of a debt which remains unpaid ninety (90) days after the date described in paragraphs (d)(1) or (d)(2) of this section, if no repayment schedule satisfactory to CCC has been agreed upon. Such rate will be assessed retroactively from the date of delinquency and applied on a daily basis to all amounts due on the debt including the principal balance of the debt plus regular interest, late payment interest and other charges. Such rate shall continue to accrue until the delinquent debt has been paid.

(f) CCC shall assess as administrative charges the additional costs of processing delinquent debts against the debtor, to the extent such costs are attributable to the delinquency. Such costs include, but are not limited to, costs incurred in obtaining a credit report, costs of employing commercial firms to locate debtor, costs of employing contractors for collection services, costs of selling collateral or property to satisfy the debt.

(g) When a debt is paid in partial or installment payments, payments will be applied first to additional interest assessed in accordance with paragraph (e) of this section and administrative charges, second to assessed late payment interest, and third to outstanding principal.

§ 1403.10 Waiver of late payment interest, additional interest and administrative charges.

(a) CCC shall waive the collection of late payment interest and administrative charges on a debt or any portion of a debt which is paid within 30 days after the date on which late payment interest began to accrue.

(b) CCC shall waive the collection of additional interest on debts which are appealed in accordance with 7 CFR Part 780 or other applicable appeal procedures from either the date of the appeal or the date such interest began to accrue, whichever is later, until the date a final administrative determination is issued. Such waiver shall not apply for any delay due to:

(1) The appellant's request for a postponement of the scheduled hearing;

(2) The appellant's request for an additional time following the hearing to present additional information or a written closing statement; or

(3) The appellant's failure to timely present information to the reviewing authority.

(c) Assessment and collection of late payment interest, additional interest and administrative charges under this Part may be waived by CCC in full, or in part, if it is determined that such action is in the best interest of CCC.

§ 1403.11 Administrative appeal.

If the opportunity to appeal the determination has not previously been provided under parts 24 or 780 of this title or any other appeal procedure, a debtor may obtain an administrative review under part 780 of this title of CCC's determination concerning the existence or amount of a debt, if a request is filed with the authority who made the determination within 15 days of the date of CCC's initial demand letter.

§ 1403.12 Additional administrative collection action.

Nothing contained in this part shall preclude the use of any other administrative remedy which may be available to CCC to collect debts owed to the Government.

§ 1403.13 Contact with debtor's employing agency.

When a debtor is employed by the Federal Government or is a member of the military establishment or the Coast Guard, and collection by offset cannot be accomplished in accordance with 5 U.S.C. 5514, CCC may contact the employing agency to arrange for payment of the debt by allotment or otherwise, in accordance with section 206 of Executive Order No. 11222, May 8, 1965, 30 FR 6469.

§ 1403.14 Prior provision of rights with respect to debt.

CCC will not provide an administrative appeal with respect to issues which were subject to administrative review at the debtor's request as provided under another statute or regulation before:

(a) Effecting administrative offset;

(b) Referring the debt to private collection or credit reporting agencies;

(c) Referring the debt to the Office of Personnel Management (OPM) for salary offset against the current pay of a present or former Government employee; or

(d) Referring the debt to IRS for tax refund offset.

§ 1403.15 Discharge of Debts.

(a) Except as required by other applicable regulation or statute, a debt or part thereof owed CCC shall be discharged and the records and accounts on that debt closed in the following situations:

(1) When an obligation or part thereof is discharged in bankruptcy;

(2) When an obligation or part thereof is the subject of a final judgment entered by a court of competent jurisdiction which is adverse to CCC;

(3) When a debt or part thereof is compromised and paid, the amount of such compromise;

(4) When collection of a debt by administrative offset is barred in accordance with § 1403.7(s)(5).

(b) A debt or part thereof owed CCC may be discharged and the records and accounts on that debt closed when the Controller, CCC, has determined that such action is in the best interest of CCC.

(c) A claims official or claims officer may discharge a delinquent debt if such debt arises under the terms of the authority delegated to such official or officer in the following circumstances:

(1) The delinquent debt is owed by an entity which has been liquidated or dissolved and no legal remedy is feasible.

(2) The delinquent debt is owed by an individual who:

(i) Is declared legally insane or incompetent;

(ii) Possessed of no assets or other means of payment; and

(iii) Possessed of no reasonable prospects of being able to pay the debt in the future.

(3) The delinquent debt was incurred by an individual who is deceased, and from whose estate recovery cannot be made.

(d) Debts discharged in accordance with this section may be reported to the Internal Revenue Service pursuant to § 1403.19.

§ 1403.16 Referral of delinquent debts to credit reporting agencies.

(a) This section specifies the procedures that will be followed by CCC and the rights that will be afforded to debtors when CCC reports delinquent debts to credit reporting agencies.

(b) Before disclosing information to a credit reporting agency in accordance with this part, CCC shall review the claim and determine that it is valid and delinquent.

(c) Before a debt may be referred to a credit reporting agency, the debtor must be notified, pursuant to § 1403.4, of CCC's intent to make such a report. Such notification shall include:

(1) CCC's intent to disclose to a credit reporting agency that the debtor is responsible for the debt, and that such disclosure will be made not less than 60 days after notification to such debtor.

(2) The information intended to be disclosed to the credit reporting agency under paragraph (g)(1) of this section.

(3) The debtor's right to enter a repayment agreement on the debt, including, at the discretion of CCC, installment payments, and that if such an agreement is reached, the debt will not be referred to a credit reporting agency.

(4) The debtor's right to review of this action in accordance with paragraph (i) of this section.

(d) The debtor shall be notified, in writing at the debtor's last known address, when CCC has reported any delinquent debt to a credit reporting agency.

(e)(1) CCC shall notify each credit reporting agency to which an original disclosure of delinquent debt information was made of any substantial change in the condition or amount of the claim.

(2) CCC shall promptly verify or correct, as appropriate, information about the debt on request of a credit reporting agency. The records of the debtor shall reflect any correction resulting from such request.

(f) Information reported to a credit reporting agency on delinquent debts shall be derived from the system of records maintained by CCC.

(g) CCC shall limit delinquent debt information disclosed to credit reporting agencies to:

(1) The name, address, taxpayer identification number, and other information necessary to establish the identity of the debtor;

(2) The amount, status, and history of the claim; and

(3) The program under which the claim arose.

(h) Reasonable action shall be taken to locate a debtor for whom CCC does not have a current address before reporting delinquent debt information to a credit reporting agency.

(i)(1) Before disclosing delinquent debt information to a credit reporting agency, CCC shall, upon request of the debtor, provide for a review of the debt in accordance with § 1403.11. This review shall only consider defenses or arguments which were not available or could not have been available at any previous appeal proceeding permitted under § 1403.11.

(2) Upon receipt of a request for review within 30 days from the date of notice to the debtor of intent to refer delinquent debt information to a credit reporting agency, CCC shall suspend its schedule for disclosure to a credit reporting agency until a final decision regarding the appropriateness of disclosure to a credit reporting agency is made.

(3) Upon completion of the review, the reviewing official shall transmit to the debtor a written notification of the decision. If appropriate, the debtor shall be notified of the scheduled date on or after which the debt will be referred to the credit reporting agency. The debtor will also be notified of any changes from the initial notification in the information to be disclosed.

(j)(1) In accordance with guidelines established by the Executive Vice President, CCC, the responsible claims official shall report to credit reporting agencies delinquent debt information specified in paragraph (g) of this section.

(2) The agreements entered into by USDA and credit reporting agencies shall provide the necessary assurances to CCC that the credit reporting agencies to which information will be provided are in compliance with the provisions of all the laws and regulations of the United States relating to providing credit information.

(3) CCC shall not report delinquent debt information to credit reporting agencies when:

(i) The debtor has entered a repayment agreement covering the debt with CCC, and such agreement is still valid; or

(ii) CCC has suspended its schedule for disclosure of delinquent debt information pursuant to paragraph (i)(2) of this section.

(k) Disclosures made under this section shall be in accordance with the requirements of the Privacy Act, as amended (5 U.S.C. 552a).

§ 1403.17 Referral of debts to Department of Justice.

Debts which cannot be collected in accordance with these regulations may be referred to the Department of Justice for collection action.

§ 1403.18 Referral of delinquent debts to IRS or tax refund offset.

CCC may refer legally enforceable delinquent debts to IRS to be offset against tax refunds due to debtors under 26 U.S.C. 6402, in accordance with the provisions of 31 U.S.C. 3720A and Treasury Department regulations.

§ 1403.19 Reporting discharged debts to IRS.

(a) In accordance with IRS regulations, CCC may report to IRS as discharged debts on IRS Form 1099-G only the amounts specified in paragraph (b) of this section.

(b) The following discharged debts may be reported to IRS:

(1) The amount of a debt discharged under a compromise agreement between CCC and the debtor, except for compromises made due to doubt about the Government's ability to prove its case in court for the full amount of the debt.

(2) The amount of a debt discharged by the running of the statutory period of limitation for collecting the debt by administrative offset specified in 31 U.S.C. 3716.

(3) The amount of a debt discharged by CCC in accordance with § 1403.15(b).

§ 1403.20 Referral of debts to private collection agencies.

If CCC's collection efforts have been unsuccessful after 90 days and the delinquent debt remains unpaid, CCC may refer the debt to a private collection agency for collection.

PART 1404—ASSIGNMENT OF PAYMENTS

Sec.
1404.1 General Statement.
1404.2 Definitions.

Sec.
1404.3 Payments which may be assigned.
1404.4 Execution of assignment form.
1404.5 Payment assigned not to be discounted.
1404.6 Payment to the assignee.
1404.7 Misrepresentations.
1404.8 Liability of the Secretary or disbursing agents.
§ 1404.9 OMB Control Numbers assigned pursuant to the Paperwork Reduction Act.

AUTHORITY: 15 U.S.C. 714b and 714c; 16 U.S.C. 590h(g).

SOURCE: 54 FR 52883, Dec. 22, 1989, unless otherwise noted.

1404.1 General statement.

This part sets forth the manner in which a person may assign a cash payment which is made by the Agricultural Stabilization and Conservation Service (ASCS) or the Commodity Credit Corporation (CCC). Such payments may only be assigned in the manner set forth in this part.

§ 1404.2 Definitions.

(a)(1) *"Assignee"* means any person, including any agency of the Federal Government, to whom an assignment of an ASCS or CCC payment is made in accordance with this part.

(2) *"Assignor"* means any person who is the recipient of a payment from ASCS or CCC who assigns the payment to another person in accordance with this part.

(3) *"Payment"* means a cash payment and excludes

(i) Any payment made in accordance with part 1470 of this title;

(i) Price support loan or purchase agreement proceeds; and

(iii) Any payments made in accordance with parts 1487, 1488, 1491, 1492, and 1493 of this title.

(b) The terms defined in parts 719, 1413, 1421 and 1427 shall also be applicable to this part.

§ 1404.3 Payments which may be assigned.

(a) Except as otherwise provided in this part or in individual program regulations, contracts and agreements entered into by ASCS or CCC, any payment due a person from ASCS or CCC may be assigned.

(b)(1) A payment which is made to a producer in accordance with 7 CFR parts 701 and 1413 may not be assigned to pay or secure any preexisting indebtedness.

(2) Payments made in accordance with 7 CFR parts 701 and 1413 may be assigned only as security for cash or advances to finance making a crop, handling or marketing an agricultural commodity, or performing a conservation practice, for the current crop year. To finance making a crop means

(i) To finance the planting, cultivating, or harvesting of a crop, including the purchase of equipment required therefor and the payment of cash rent for land used therefor, or

(ii) To provide food, clothing, and other necessities required by the producer or persons dependent upon the producer.

§ 1404.4 Execution of assignment form.

(a)(1) The assignment of any ASCS or CCC payment must be made by the execution of Form CCC-36 or Forms CCC-251 and CCC-252. Form CCC-36 is applicable to payments made under programs administered in accordance with 7 CFR parts 701, 704, 1413, 1430, 1468, 1472 and 1475. Such form is also applicable to any other program which is administered by a county ASC committee. Forms CCC-251 and 252 are applicable to all other CCC or ASCS programs and contracts.

(2)(i) To be recognized by ASCS or CCC, Form CCC-36 must be filed in the county ASCS office prior to the time the county committee approves the making of the payment covered by the assignment. To be recognized by ASCS or CCC, Forms CCC-251 and 252 must be filed with the ASCS or CCC office from which the payment will be made prior to the making of the payment.

(ii) Form CCC-36 or Forms CCC-251 and 252 must be signed by both the assignor and the assignee. With respect to Form CCC-36, the assignor's signature must be witnessed by a member of the county ASC committee for the county where the farm is located, or by an employee of the county committee, unless the assignee is a bank whose deposits are insured by the Federal Deposit Insurance Corporation, the Farmers Home Administration, or a production credit association supervised by the Farm Credit Administration, in which case the assignment may be witnessed by a bonded officer of such lending institution.

(3) The assignor and the assignee shall promptly notify the appropriate ASCS or CCC office of any change affecting the assignment.

§ 1404.5 Payment assigned not to be discounted.

(a) With respect to assignments made by execution of Form CCC-36, if interest is charged by the assignee on the amount advanced, the rate of interest must not be in excess of the maximum rate lawfully chargeable under the law of the State where the farm is located.

(b) The payment assigned shall not be discounted by charging the assignor more than the current cash price for any supplies furnished or in any other manner whatsoever. Interest may be deducted by the assignee in advance from any cash advancement.

§ 1404.6 Payment to the assignee.

(a) The assignee shall be paid the smaller of the amount specified on Form CCC-36 or CCC-251 or the amount of the payment earned under the program or contract covered by the assignment. Any indebtedness owed by the assignor to CCC, ASCS, or any other agency of the United States shall be subject to offset.

(b) Any indebtedness owed by the assignor to CCC or ASCS shall be offset from any payment which is owed by CCC or ASCS without regard to the date of filing of a Form CCC-36 with the applicable ASCS or CCC office. Except as provided in paragraph (d) of this section, any indebtedness owed by the assignor to CCC or ASCS shall be offset from any payment which is owed by CCC or ASCS if such indebtedness was entered on the debt record of the applicable ASCS or CCC office prior to the date of the filing of Forms CCC-251 and 252 with the applicable ASCS or CCC office.

(c) Any indebtedness owed by the assignor to any agency of the United States other than CCC or ASCS which was entered on the debt record of the applicable ASCS or CCC office prior to the date of filing of the Form CCC-36 or Forms CCC-251 and 252 with such office shall be offset prior to the making of any payment to the assignee.

(d) Any indebtedness arising under a contract between the assignor and ASCS or CCC which is the subject of the assignment shall be offset from the payment prior to the making of any payment to the assignee under such contract without regard to the date of the filing of Form CCC-36 or Forms CCC-251 and 252 with the appropriate ASCS or CCC office.

§ 1404.7 Misrepresentations.

If ASCS or CCC has reason to believe that any material misrepresentation was made by the assignor or the assignee in executing Forms CCC-36, CCC-251 or CCC-252, ASCS or CCC shall give notice thereof to the assignor and the assignee. If, after investigation and opportunity for the assignor and assignee to be heard, ASCS or CCC finds that any material misrepresentation was in fact made, ASCS or CCC shall notify the assignor and the assignee of such finding, and void such assignment, and insofar as concerns ASCS, CCC or any other agency of the United States, the assignment shall be of no effect.

§ 1404.8 Liability of the Secretary or disbursing agents.

Neither the United States, the CCC, the Secretary nor any disbursing agent shall be liable in any suit if payment is made to the assignor without regard to the existence of any assignment, and nothing contained herein shall be construed to authorize any suit against the United States, the CCC, the Secretary or any disbursing agent if payment is not made to the assignee, or if payment is made to only one of several assignees.

§ 1404.9 OMB Control Numbers assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in this part have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. 35 and have been assigned OMB control number 0560-0004.

PART 1405—LOANS, PURCHASES AND OTHER OPERATIONS

Sec.
1405.1 Loans to and purchases by trustees.
1405.2 Basic rule of fractions.
1405.3 [Reserved]
1405.4 State loan mediation programs.
1405.5 Special rules for 1989 and prior year loans.

AUTHORITY: 15 U.S.C. 714b and 714c.

§ 1405.1 Interest.

(a) *General.* Except as may otherwise be determined by CCC as provided in individual program regulations, program contracts or such other means as deemed appropriate by CCC, interest shall be assessed as provided in this Part with respect to loans disbursed by CCC.

(b) *Rate in effect on disbursement.* The rate of interest that is applicable to CCC loans shall be equal to the rate of interest charged by the U.S. Treasury for funds borrowed by CCC on the date the loan is disbursed by CCC. This rate of interest shall be in effect until the earlier of the maturity of the loan or the next January 1.

(c) *Rate in effect as of January 1.* The rate of interest applicable to all CCC loans that are outstanding as of January 1 of any year shall be adjusted as of such date to equal the rate of interest charged by the U.S. Treasury for funds borrowed by CCC on such date. This rate shall be in effect until the earlier of the maturity of the loan or the next January 1. The rate of interest applicable to CCC loans as of January 1 of any year shall be announced by CCC by press release or other means.

[53 FR 47659, Nov. 25, 1988]

§ 1405.2 Basic rule of fractions.

Fractions shall be rounded in accordance with the provisions of 7 CFR Part 793.

[53 FR 47659, Nov. 25, 1988]

§ 1405.3 [Reserved]

§ 1405.4 State loan mediation programs.

With respect to farm facility loans made in accordance with 7 CFR Part 1474, the Commodity Credit Corporation (CCC) will participate in mediations conducted pursuant to a State's agricultural loan mediation program under the same terms and conditions applicable to agricultural creditors generally and will cooperate in good faith in such mediations by complying with requests for information and analysis, and in presenting and exploring debt restructuring proposals whenever feasible, when that State is and remains a qualifying State as defined in 7 CFR 1946.2(b). CCC will not participate in such mediation programs with respect to commodity price support loans made in accordance with this title.

[54 FR 52013, Dec. 20, 1989]

§ 1405.5 Special rules for 1989 and prior year loans.

With respect to all 1989 and prior crop year CCC loans made in accordance with parts 1421 through 1474 of this title, all references to interest accrued in accordance with 7 CFR part 1403 shall be deemed to be references to the regulations set forth in 7 CFR part 1403 as of December 1, 1989.

[55 FR 1571, Jan. 17, 1990]

PART 1407—SUSPENSION AND DEBARMENT

Sec.
1407.1 Purpose.
1407.2 Suspension and debarment.
1407.3 Scope.

AUTHORITY: Sec. 4, 62 Stat. 1070, as amended (15 U.S.C. 714b).

SOURCE: 50 FR 12767, Apr. 1, 1985, unless otherwise noted.

§ 1407.1 Purpose.

This part prescribes the terms and conditions under which persons (i.e., an individual or any form of business entity, such as a proprietorship, partnership, corporation, association, or cooperative) may be suspended and debarred from contracting with the

Commodity Credit Corporation (CCC) and from otherwise participating in programs administered or financed by CCC.

§ 1407.2 Suspension and debarment.

The provisions of 48 CFR 409.403 *et seq.* shall be applicable to all CCC suspension and debarment proceedings, except that the authority to suspend or debar is reserved to the Executive Vice President, CCC, or his designee.

§ 1407.3 Scope.

CCC suspension and debarment proceedings shall not be applicable to contracts entered into by CCC under its price support operations and other CCC programs with persons in their capacity as producers.

PART 1409—MEETINGS OF THE BOARD OF DIRECTORS OF COMMODITY CREDIT CORPORATION

Sec.

1409.1 General statement.
1409.2 Definitions.
1409.3 Open meetings.
1409.4 Exemptions.
1409.5 Closure of meetings.
1409.6 Notices to the public.
1409.7 Records retention.
1409.8 Public inspection and copying of records; applicable fees.
1409.9 Report to Congress.

Authority: Sec. 3(a), 90 Stat. 1244 (5 U.S.C. 552b), and sec. 4, 62 Stat. 1070, as amended (15 U.S.C. 714b).

Source: 42 FR 14673, Mar. 16, 1977, unless otherwise noted.

§ 1409.1 General statement.

(a) It is the policy of Commodity Credit Corporation, under the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b) to make available to the public, to the fullest extent practicable, information regarding the decision process of the Board of Directors of Commodity Credit Corporation.

(b) This part sets forth the procedural requirements designed to provide the public with such information while continuing to protect the rights of individuals and to maintain the capabilities of Commodity Credit Corporation in carrying out its responsibilities under the statutes administered by Commodity Credit Corporation.

§ 1409.2 Definitions.

(a) The term "Board" means the Board of Directors of Commodity Credit Corporation.

(b) The term "Director" means an individual who is a member of the Board of Directors of Commodity Credit Corporation and includes the Secretary of Agriculture, who is by statute an ex-officio director and Chairman of the Board.

(c) The term "General Counsel" means the General Counsel or the Assistant General Counsel of Commodity Credit Corporation.

(d) The term "meeting" means the deliberations of at least five (quorum) Directors of the Board of Directors of Commodity Credit Corporation where such deliberations determine or result in the joint conduct or disposition of official Board business but shall not include deliberations for:

(1) Closing a portion or portions of a meeting or series of meetings as provided in § 1409.5 (a) and (b) of this part, or

(2) Calling a meeting at a date earlier than announced as provided in paragraph 1409.6(a)(2) of this part; or

(3) Changing the subject matter of a publicly announced meeting as provided in § 1409.6(b) of this part; or

(4) Determining whether or not to withhold from disclosure information pertaining to a meeting or portions of a meeting or series of meetings as provided in § 1409.5(b) of this part.

(e) The term "public observation" means the right of any member of the public to attend and observe, but not participate or interfere in any way in an open meeting of the Board, within the limits of reasonable and comfortable accommodations made available for such purpose by Commodity Credit Corporation.

§ 1409.3 Open meetings.

Every portion of every meeting of the Board of Directors will be open to public observation except as provided in §§ 1409.4 and 1409.5 of this part.

§ 1409.4 Exemptions.

(a) A portion or portions of a Board meeting may be closed to the public and any information pertaining to such meeting otherwise required by § 1409.3 of this part to be disclosed to the public may be withheld, where the Board determines that public disclosure of information to be discussed at such meetings is likely to—

(1) Disclose matters that are:

(i) Specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and

(ii) In fact properly classified pursuant to such Executive order;

(2) Relate solely to the internal personnel rules and practice of Commodity Credit Corporation;

(3) Disclose matters specifically exempted from disclosure by statute (other than the Freedom of Information Act, 5 U.S.C. 552), provided that such statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Involve accusing any person of a crime, or formally censuring any person;

(6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would:

(i) Interfere with enforcement proceedings,

(ii) Deprive a person of a right to a fair trial or to an impartial adjudication,

(iii) Constitute an unwarranted invasion of personal privacy, or

(iv) Disclose the identity of a confidential source, and, in the case of a record compiled by a criminal enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,

(v) Disclose investigative techniques and procedures, or

(vi) Endanger the life or physical safety of law enforcement personnel;

(8) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) Disclose information the premature disclosure of which would be likely to: (i) Lead to significant financial speculation in agricultural commodities or significantly endanger the stability of any financial institution, or

(ii) Significantly frustrate implementation of a proposed Board action except where the Board has already disclosed to the public the content or nature of its proposed action or where Commodity Credit Corporation is required by law to make such disclosure on its own initiative prior to taking final action on such proposal; or

(10) Specifically concern Commodity Credit Corporation's participation in a civil action or proceedings.

(b) Any Board meeting or portion thereof, which may be closed, or any information which may be withheld under paragraph (a) of this section, will not be closed or withheld, respectively, in any case where the Board finds the public interest requires otherwise.

§ 1409.5 Closure of meetings.

(a) *Procedure for closing a majority of the meetings.* (1) A majority of the meetings of the Board will be closed to the public pursuant to exemptions 4, 8, (9)(i) and 10 of § 1409.4(a) of this part. These meetings will include deliberations such as those relating to the levels of price support for various agricultural commodities, the allocation of quantities of commodities for export programs, and the interest rates for commodity loans and farm storage facility loans. Board meetings will be closed pursuant to exemptions 4, 8, (9)(i) and 10 when at least five Directors vote at the beginning of such meeting, or portion thereof, to close the exempt portion or portions of the meeting. A copy of the vote, reflecting the vote of each Director on the question, will be made available to the public. The Board will, except to the extent that such information is exempt from disclosure under the exemptions in § 1409.4(a) of this part, provide the public with public announcement of the time, place, and subject matter of the meeting and of each portion thereof, at the earliest practicable time.

(2) The provisions of paragraph (b) of this section and § 1409.6, except § 1409.6(e), of this part will not apply to any meeting or portion thereof to which paragraph (a) of this section applies.

(b) *Procedure for closing other meetings.* (1) A separate vote of the entire membership of the Board will be taken with respect to each Board meeting a portion or portions of which are proposed to be closed to the public or any information which is proposed to be withheld from the public on the basis of one or more of the exemptions in § 1409.4(a) of this part. The vote of each Director will be recorded and no proxy shall be allowed.

(2) A portion or portions of a meeting may be closed on the basis of one or more of the exemptions in § 1409.4(a) of this part only when at least five Directors vote to take such action.

(3) A single vote of the entire membership of the Board may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public or with respect to the withholding of any information concerning such series of meetings, on the basis of one or more of the exemptions in § 1409.4(a) of this part. Each meeting in such series must involve the same particular matters and must be scheduled to be held no more than thirty days after the initial meeting in such series. The vote of each Director participating in such vote will be recorded and no proxy vote shall be allowed.

(4) Whenever any person whose interests may be directly affected by a portion of a Board's meeting requests that the Board close such portion to the public on the basis of exemptions (5), (6), or (7) of § 1409.4(a) of this part, the Board, upon the request of any one of its members, will vote whether or not to close such portion of the meeting. The vote of each Director participating in such vote will be recorded and no proxy shall be allowed.

(c) *General counsel's certification.* Before every Board meeting closed on the basis of one or more of the exemptions in § 1409.4(a) of this part, the General Counsel will publicly certify that, in his opinion, the meeting may be closed to the public and shall state each relevant exemption.

§ 1409.6 Notices to the public.

(a) (1) The Secretary of the Board will make public announcement at least one week before each Board meeting of (i) the time and place of the meeting, (ii) subject matter of the meeting, except to the extent that such information is exempt from disclosure under § 1409.4(a) of this part, (iii) whether the meeting is to be open or closed to the public and (iv) the name and business telephone number of the Secretary of the Board.

(2) Notwithstanding paragraph (a)(1) of this section, less than one week advance public notice for a meeting may be given when at least five Directors determine by recorded vote that the Board business requires that a meeting be called at an earlier date, but in such case, announcement of the meeting will be made at the earliest practicable time.

(b) (1) When the Board votes on whether to close a portion or portions of a meeting or a series of meetings, or with respect to withholding any information concerning such meeting or series of meetings, in accordance with § 1409.5(b) of this part, the Secretary of the Board will make available to the public a written copy of such vote reflecting the vote of each member on the question within one business day of such vote.

(2) If the Board votes to close a portion or portions of a meeting or a series of meetings in accordance with § 1409.5(b) of this part, the Secretary of the Board will make available to the public within one business day of such vote, (i) a list of the names and affiliations of persons expected to be present at such closed portion or portions of the meeting or series of meetings and (ii) a full written explanation of the Board's action in closing the portion of portions of the meeting or series of meetings, unless such disclosure would reveal the information that the meeting itself was closed to protect.

(c) The time or place of a board meeting may be changed following the public announcement as required by paragraph (a)(1) of this section only if the Board publicly announces such change or changes at the earliest practicable time.

(d) The subject matter of a Board meeting or the determination of the Board to open or close a meeting or portions thereof to the public, may be changed following the public announcement as required by paragraph (a)(1) of this section only if (i) five Directors determine by recorded vote that Board business so requires and that no earlier announcement of the change was possible and (ii) the Board publicly announces such change and the vote of each Director upon such change at the earliest practicable time.

(e) The Secretary of the Board shall use all reasonable means to keep the public promptly and fully informed of public announcements including the use of a bulletin board outside the office of the Secretary of the Board at the address indicated in § 1409.8(b) of this part. Requests for information concerning Board meetings should be addressed to the Secretary of the Board.

(f) Immediately following each public announcement required by this section, the information provided in such public announcement will be submitted for publication in the FEDERAL REGISTER.

(g) The Board usually meets in room 200-A, Administration Building, United States Department of Agriculture, 14th Street and Independence Avenue, SW., Washington, D.C. Each person interested in attending an open meeting of the Board should notify the Secretary of the Board at least one business day prior to the open meeting of their intention to attend the meeting. Any person who fails to do so may not be accommodated if there is insufficient space in the meeting room.

§ 1409.7 Records retention.

(a) The Secretary of the Board will maintain the following records for each Board meeting, or portion thereof which is closed to the public pursuant to a vote under § 1409.5 of this part:

(1) A copy of the General Counsel's certification required by § 1409.5(c) of this part;

(2) A copy of a statement from the presiding officer which sets forth the time and place of the closed meeting or portion thereof and list of persons present; and

(3) A complete verbatim transcript or electronic recording adequate to record fully the proceedings of each Board meeting or portion of a meeting, except that in the case of a meeting or portion of a meeting closed to the public on the basis of exemptions (8), (9)(i) or (10) of § 1409.4(a) of this part, the Secretary of the Board will maintain either a transcript, electronic recording, or a complete set of minutes. Such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of actions taken and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll-call vote reflecting the vote of each member on the question. All documents considered in connection with any action will be identified in such minutes.

(b) The retention period for the records required by paragraph (a) of this section will be for a period of at least two years after the particular Board meeting, or until one year after the conclusion of any Board proceeding with respect to which the meeting or portion thereof was held, whichever occurs later.

§ 1409.8 Public inspection and copying of records; applicable fees.

(a) The Secretary of the Board will make promptly available to the public the transcript, electronic recording, transcription of the recording, or minutes of the discussion of any item on the agenda of a Board meeting, or any item of the testimony of any witness received at the meeting except for such item or items of such discussion or testimony as the Secretary of the Board determines to contain information which may be withheld on the basis of one or more of the exemptions in § 1409.4(a) of this part.

(b) Requests for public inspection of electronic recording, transcripts or minutes of Board meetings shall be made to the Secretary of the Board of Directors of Commodity Credit Corporation, Room 218-W, Administration Building, United States Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC 20250.

(c) The transcripts, minutes, or transcriptions of electronic recordings of a Board meeting will disclose the identity of each speaker, and will be furnished to any person at the actual cost of transcription or duplication.

§ 1409.9 Report to Congress.

The Secretary of Agriculture will annually report to the Congress regarding the Board's compliance with the Government in the Sunshine Act, including a tabulation of the total number of open meetings, the total number of closed meetings, the reasons for closing such meetings and a description of any litigation brought against the Board pursuant to the Government in the Sunshine Act, including any costs assessed against Commodity Credit Corporation in such litigation.

SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS

EDITORIAL NOTE: For FEDERAL REGISTER citations to regulations for previous program years not included in this volume, see the List of CFR Sections Affected in the Finding Aids section of this volume.

PART 1413—FEED GRAIN, RICE, UPLAND AND EXTRA LONG STAPLE COTTON, WHEAT AND RELATED PROGRAMS

Sec.
1413.1 Applicability.
1413.2 Administration.
1413.3 Definitions.
1413.4 Determining crop acreages.
1413.5 [Reserved]
1413.6 Farm program payment yields.
1413.7 Crop acreage bases.
1413.8 Farm acreage bases.
1413.9 Normal crop acreages.
1413.10 Notice of crop and farm acreage bases, yields, and NCA.
1413.11 Reconstitution of farms.
1413.12 Adjusting crop acreage bases.
1413.13—1413.48 [Reserved]
1413.49 Nature of contract.
1413.50 Contracting procedures.
1413.51 Required acreage reduction.
1413.52 Required set-aside.
1413.53 Land diversion.
1413.54 Wheat grazing and hay.
1413.55 Loan deficiency program.
1413.56 Inventory reduction program.
1413.57 Reduction in acreage to be devoted to conservation uses.
1413.58 Bid diversion program.
1413.59 [Reserved]
1413.60 Basic rules for ACR acreage.
1413.61 Eligible land.
1413.62 Approved cover crops and practices.
1413.63 Use of ACR acreage.
1413.64 Control of erosion, insects, weeds, and rodents on ACR acreage.
1413.65 Orchards.
1413.66 Land going out of agricultural production.
1413.67 Emergency grazing or harvesting.
1413.68 Wildlife food or habitat.
1413.69 Noncrop uses or practices.
1413.70 Insufficient ACR acreage.
1413.71 Destroyed crop acreage.
1413.72 Provisions applicable to certain small grains.
1413.73 Late harvesting.
1413.74 Skip rows.
1413.75—1413.96 [Reserved]
1413.97 Ineligible land.
Sec.
1413.98 Participation in Conservation Reserve Program.
1413.99 Compliance with sodbuster and swampbuster provisions.
1413.100 Cross compliance on the farm.
1413.101 Offsetting compliance between farms.
1413.102 Determination of farm program acreage.
1413.103 General payment provisions.
1413.104 Advance payments.
1413.105 Disaster credit.
1413.106 Established (target) prices.
1413.107 National program acreage.
1413.108 Deficiency payments.
1413.109 Division of payments.
1413.110 Eligibility of hybrid seed producers.
1413.111—1413.129 [Reserved]
1413.130 Eligibility for regular prevented planting and reduced yield payments.
1413.131 Regular disaster payment computations.
1413.132—1413.149 [Reserved]
1413.150 Provisions relating to tenants and sharecroppers.
1413.151 Successors-in-interest.
1413.152 Misrepresentation and scheme or device.
1413.153 Setoffs and assignments.
1413.154 Payments by commodities and commodity certificates and refunds.
1413.155 Appeals.
1413.156 Performance based upon advice or action of county or State committee.
1413.157 Paperwork Reduction Act assigned numbers.

AUTHORITY: 7 U.S.C. 1308, 1308a, 1309, 1441-1, 1444-1, 1444b, 1445b-2, 1445b-3, 1445b-4, 1445d, 1445h, 1421, 1423, and 1461-1469; 15 U.S.C. 714b and 714c.

SOURCE: 51 FR 36905, Oct. 16, 1986. Redesignated at 53 FR 20290, June 3, 1988, unless otherwise noted.

§ 1413.1 Applicability.

(a) The regulations in this part, which are applicable to the feed grain, rice, upland and extra long staple ("ELS") cotton, and wheat programs for the 1990 crops, set forth the terms and conditions under which producers of these commodities who enter into contracts with the Commodity Credit Corporation ("CCC") and comply with the contracts and the provisions of this part may qualify for program benefits.

(b) *Payment limitations.* In accordance with section 1001 of the Food Security Act of 1985, as amended, the total amount of certain payments which a "person" may receive in accordance with the programs set forth in this part may not exceed limitation of $50,000 and $250,000. The manner in which a "person" is determined for these purposes is set forth at part 1497 of this chapter.

(c) In accordance with the regulations in Part 796 of this chapter, payments shall not be made for a period of 5 crop years to program participants who are convicted of planting, cultivating, growing, producing, harvesting or storing a controlled substance such as marihuana.

(d) The programs are applicable throughout the United States, including Puerto Rico.

[51 FR 36905, Oct. 16, 1986, as amended at 53 FR 3858, Feb. 10, 1988. Redesignated at 53 FR 20290, June 3, 1988, and amended at 55 FR 1571, Jan. 17, 1990]

§ 1413.2 Administration.

(a) The programs will be administered under the general supervision of the Administrator, Agricultural Stabilization and Conservation Service ("ASCS") and shall be carried out in the field by State and county Agricultural Stabilization and Conservation committees (herein called "State and county committees").

(b) State and county committees, and representatives and employees thereof, do not have authority to modify or waive any of the provisions of the regulations of this part.

(c) The State committee shall take any action required by these regulations which has not been taken by the county committee. The State committee shall also (1) correct, or require a county committee to correct, any action taken by such county committee which is not in accordance with the regulations of this part, or (2) require a county committee to withhold taking any action which is not in accordance with the regulation of this part.

(d) No provision or delegation herein to a State or county committee shall preclude the Administrator, ASCS, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator may authorize State and county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not affect adversely the operation of the program.

(f) A representative of CCC may execute a contract to participate in the wheat, feed grain, upland and ELS cotton, and rice programs only under the terms and conditions determined and announced by the Executive Vice President, CCC. Any contract which is not executed in accordance with such terms and conditions, including any purported execution prior to the date authorized by the Executive Vice President, CCC, shall be null and void and shall not be considered to be a contract between CCC and the operator and any other producer on the farm.

[51 FR 36905, Oct. 16, 1986, as amended at 51 FR 39482, Oct. 28, 1986; 52 FR 10727, Apr. 3, 1987. Redesignated at 53 FR 20290, June 3, 1988]

§ 1413.3 Definitions.

(a) *Applicability.* The definitions set forth in this section shall be applicable for all purposes of program administration. The terms defined in Part 719 of this chapter governing the reconstitution of farms shall also be applicable except where those definitions conflict with the definitions set forth in this section.

(b) "Annual nonconserving crop" means any annual crop intended for harvest or use in any feed form except for the following:

(1) Grasses regardless of use, including sweet sorghum, millet, and sudan grass;

(2) Legumes, including peas, beans or soybeans for seed, grain, or processing where planting of such crops was delayed beyond the normal planting period by a disaster and the crop is too poor to be used for seed, grain, or

processing. In all other cases, soybeans produced for seed, grains, or processing are a nonconserving crop; and

(3) Small grains that are disposed of before the disposal deadline and excluded by the operator.

(c) "Base period" means the five crop years immediately preceding the current crop year.

(d) "Conserving uses" shall mean all uses during a year of cropland as defined in Part 719 of this chapter except for:

(1) Acreage of crops planted for harvest or use during the current crop year, which shall include:

(i) A crop of rice, upland cotton, feed grains, wheat, or ELS cotton;

(ii) A crop of soybeans;

(iii) Any nonprogram crop;

(iv) Any crop for which price support is available through loans and purchases in accordance with chapter XIV of this title; and

(v) In a State where the State committee, after consulting with interested parties, has determined that haying of conserving use acreage designated to a program crop for payment purposes under § 1413.108(b)(2) shall not be permitted, any acreage which is harvested for green chop, hay, silage, or haylage.

(2) Acreage which is not available to be cropped in the current year because:

(i) Of a contract under the Water Bank Program in accordance with Part 752 of this chapter;

(ii) Of an agreement under the Great Plains Conservation Program in accordance with Part 631 of this title;

(iii) Of a contract under the Conservation Reserve Program in accordance with Part 704 of this chapter; or

(iv) The acreage is designated as acreage conservation reserve ("ACR") acreage for the current year.

(3) Any land which the producer was prevented from planting to a crop of rice, upland or ELS cotton, feed grains, or wheat and which is considered as planted to such crop for the purpose of computing crop acreage bases;

(4) Any acreage which is determined to be ineligible in accordance with § 1413.97; and

(5) Any other acreage which is not available to be cropped in the current year and which is excluded in accordance with instructions issued by the Deputy Administrator.

(e) "Considered planted acreage" means for a crop the following:

(1) With respect to the 1981 through 1985 crop years, the acreage of a program crop determined to be considered as planted in accordance with the regulations in this part which were applicable for such crop year; and

(2) With respect to the 1986 and subsequent crop years, the sum of the following except that for farms participating in a set-aside, acreage reduction, or diversion program for the crop, the sum of the planted acreage and considered planted acreage for the crop shall not exceed the crop acreage base for the crop for the crop year:

(i) Any acreage devoted to ACR for the crop under a set-aside, acreage reduction, or diversion program as set forth in this part or any other part;

(ii) For wheat, any acreage eligible for payment in accordance with the wheat grazing and hay program;

(iii) The acreage determined to be intended to be planted to the crop but which was prevented from being planted to the crop because of drought, flood, or other natural disaster, quarantine, or other conditions beyond the control of the producer in accordance with § 1413.105;

(iv) For farms on which producers are participating in an acreage reduction program for the crop, the acreage of nonprogram crops and conserving uses credited to the crop in accordance with § 1413.102;

(v) For farms on which the acreage required to be devoted to conservation uses has been reduced in accordance with § 1413.57, the smaller of the following, as determined in accordance with instructions issued by the Deputy Administrator:

(A) The amount of the reduction in acreage required to be devoted to conservation uses; or

(B) The acreage of cropland on the farm which is devoted to conserving uses, nonprogram crops, soybeans, or peanuts and which is not considered as being planted to a program crop under any other provision of this part;

(vi) For farms for which there is a Conservation Reserve Program contract in effect, an acreage equal to the amount by which any crop acreage base is reduced in accordance with § 1413.98 due to participation in the Conservation Reserve Program in accordance with Part 704 of this chapter.

(vii) For farms which for which the acreage report filed in accordance with Part 718 of this chapter reflects zero acreage of the crop and which are not participating in a set-aside, acreage reduction, or diversion program for the crop, the acreage of nonprogram crops and conserving uses credited to the crop in accordance with § 1413.102, provided that, in accordance with instructions issued by the Deputy Administrator, producers on the farm are not in violation of any cross compliance requirement in effect in accordance with § 1413.100 and such producers have not planted an acreage of a program crop in excess of the acreage base established for such program crop for the farm.

(3) With respect to farms owned by the Farmers Home Administration for 1986 and subsequent crop years, an acreage equal to the crop acreage base established for the farm in accordance with instructions issued by the Deputy Administrator.

(f) "Corn" means field corn or sterile high-sugar corn. Popcorn, sweet corn, and corn varieties grown for decoration uses are excluded.

(g) "Cotton" means upland cotton and ELS cotton meeting the definitions set forth in paragraphs (n) and (y) of this section, respectively, and excludes cotton not meeting such definitions.

(h) "Crop" or "Commodity" means barley, corn, grain sorghum, oats, rice, upland cotton, ELS cotton, or wheat ("Crop" is used when the reference is to a specific year or to growing plants; "Commodity" is used when the reference is general and abstract).

(i) "Current year" means the calendar year in which the crop with respect to which payment may be made under this part would normally be harvested.

(j) "Disposal deadline" means the date or time by which an acreage of barley, wheat, or oats must be disposed of in order that such acreage will not be considered as barley, wheat or oats for harvest or by which an acreage of rye or similar grain must be disposed of in order for the acreage to qualify as ACR acreage in accordance with § 1413.62 or as a conserving or conservation use.

(k) "Doublecropping" means the planting and harvesting of two or more different crops on the same acreage during a crop year, as determined by the county committee in accordance with instructions issued by the Deputy Administrator.

(l) "Farm program acreage" means the acreage used to compute deficiency payments for the crop for the farm as determined in accordance with § 1413.108(b).

(m) "Farm program payment yield" means the yield for the farm which is determined by the county committee in accordance with § 1413.6 adjusted to reflect any determinations made with respect to such yield in accordance with Part 780 of this chapter.

(1) "1985 farm program payment yield" means:

(i) The yield for the farm which was determined by the county committee in accordance with the regulations in this part which were applicable for the 1985 crop year; or

(ii) The yield for the farm which is determined in accordance with instructions issued by the Deputy Administrator if no yield was determined for the farm for the 1985 crop year.

(n) "Extra Long Staple (ELS) cotton"

(1) Extra long staple cotton means any of the following varieties of cotton which is ginned on a roller gin and is grown in counties specified by CCC: American-Pima; Sea Island; Sealand; all other varieties of the Barbadense species of cotton and any hybrid thereof; and any other variety of cotton in which one or more of these varieties predominate.

(2) An annual review of counties designated as suitable for the production of ELS cotton will be conducted. Counties in which ELS cotton is currently being grown and for which a roller-type gin is available will be designated or redesignated, as appropri-

ate, and a listing of such counties will be published annually in the Federal Register. Additional counties may be designated by CCC during the year as deemed appropriate.

(o) "Grain sorghum" means grain sorghum of a feed grain or dual purpose variety (including any cross which, at all stages of growth, has most of the characteristics of a feed grain or dual purpose variety). Sweet sorghum is excluded regardless of use.

(p) "Marketing year" means the 12-month period beginning in the current year and ending the next year as follows:

(1) Barley, oats, and wheat. June 1—May 31.

(2) Cotton and rice. August 1—July 31.

(3) Corn and grain sorghum. September 1—August 31.

(q) "NCA crops" means the crops which are so designated by the Secretary of Agriculture for any crop year in an announcement which establishes a normal crop acreage requirement.

(r) "Nonprogram crop" means any crop other than a crop of rice, upland or ELS cotton, feed grains, wheat, or soybeans as determined in accordance with instructions issued by the Deputy Administrator.

(1) "Approved nonprogram crop" means:

(i) Any nonprogram crop, including any crop which is grown for experimental purposes, which is approved by the Deputy Administrator, or a designee, after determining:

(A) That the production of such crop is not likely to increase the cost of the price support program, and will not affect farm income adversely, and

(B) The production is needed to provide an adequate supply of the commodity, or, in the case of commodities for which no substantial domestic production or market exists but could yield industrial raw materials, the production is needed to encourage domestic manufacture of such raw material and could lead to increased industrial use of such raw material to the long-term benefit of United States industry.

(ii) The list of approved nonprogram crops which may be planted on a farm in a county shall be available at the respective county and State office. Any restrictions on the planting of such a crop and other applicable terms and conditions for such planting shall be specified on Form CCC-477 and any appendix and addendum thereto.

(2) "Other nonprogram crop" means any nonprogram crop except approved nonprogram crops.

(s) "Person" means an individual, joint stock company, corporation, estate or trust, association, or other legal entity, except that two or more entities shall be combined as one person in accordance with:

(1) The regulations found at Part 795 of this chapter for the purpose of administering maximum payment limitations;

(2) The regulations found at Part 796 of this chapter for the purpose of administering the provisions of the Food Security Act of 1985 with respect to the production of controlled substances; and

(3) The regulations found at Part 12 of this title pertaining to the highly erodible land and wetland provisions (commonly known as "sodbuster and swampbuster" provisions).

(t) "Planted acreage" for a crop means the total of:

(1) The acreage planted for harvest as determined under the guidelines set forth in § 1413.4; and

(2) The volunteer acreage of the crop except that acreage which is determined not to be economically practical to harvest.

(u) "Producer" means a person who, as owner, landlord, tenant, or sharecropper, shares in the risk of producing the crop, or would have shared had the crops been produced.

(v) "Rice" means rice excluding sweet, glutenous, or candy rice such as Mochi Gomi.

(w) "Small grains" means barley, oats, wheat, and rye.

(x) "Soybeans" means any variety of soybeans which is planted regardless of the intended use.

(y) "Upland cotton" means planted and stub cotton which is produced from other than pure strain varieties of the Barbadense species, any hybrid thereof, or any other variety of cotton in which one or more of these varieties predominate.

[51 FR 36905, Oct. 16, 1986, as amended at 51 FR 39482, Oct. 28, 1986; 52 FR 10727, Apr. 3, 1987. Redesignated at 53 FR 20290, June 3, 1988, and amended at 54 FR 2993, Jan. 23, 1989; 55 FR 1571, Jan. 17, 1990]

§ 1413.4 Determining crop acreages.

(a) The county committee shall apply the guidelines in paragraphs (b) and (c) of this section in determining crop acreages planted for harvest, as well as any further instructions which may be issued by the Deputy Administrator:

(b) The county committee shall include as crop acreage planted for harvest any of the following:

(1) The acreage harvested;

(2) The acreage of small grains which was not disposed of before the disposal deadline; and

(3) The acreage of small grains which was disposed of before the disposal deadline if such acreage qualified for a reduced yield disaster payment in accordance with the provisions of §§ 1413.130 and 1413.131 or failed acreage credit in accordance with the provisions of § 1413.105.

(c) The county committee shall exclude as crop acreage planted for harvest any of the following:

(1) The acreage which failed and could have been replanted by the final planting date established for the crop, as determined by the Deputy Administrator, but which was not replanted;

(2) The acreage that is approved as ACR acreage in accordance with the provisions of §§ 1413.60 through 1413.74;

(3) The acreage which was disposed of without feed or other benefit (including lint benefit for cotton) and excluded by the operator on the report of acreage as provided in Part 718 of this chapter;

(4) The acreage of barley, oats, or wheat disposed of with feed benefit before the disposal deadline;

(5) The acreage which was approved for wildlife food plots or planted for wildlife in accordance with instructions issued by the Deputy Administrator;

(6) The acreage approved for grazing and hay payments in accordance with the provisions of § 1413.54; and

(7) The acreage that was planted so late that it could not mature and produce grain or lint and, with respect to corn and grain sorghum, was not harvested for silage;

(8) Any acreage which is planted for experimental purposes under the direct supervision of a State experimental station or a commercial company and which meets other requirements as prescribed by the Deputy Administrator;

(9) The acreage of barley, oats or wheat which is determined by the county committee to be not economically practical to harvest because of a low yield and which is excluded as crop acreage by the operator;

(10) The acreage of barley, oats, wheat or rice which is left standing as a cover crop past the disposal deadline determined by the Deputy Administrator if the producer: (i) Requests from the county committee, in writing, permission to allow such crop to be left standing before the crop reporting date; (ii) destroys the crop mechanically if the crop does not deteriorate before the end of the nongrazing period so that no benefit can be derived from the grain; (iii) does not obtain feed benefit from the crop; and (iv) pays the cost of a farm visit by a representative of the county committee to determine compliance with program requirements for disposal of the crop; and

(11) Any acreage designated under the Conservation Reserve Program in accordance with Part 704 of this chapter.

(d) The county committee shall consider mixtures of crops to be the crop that is predominant in the mixture, except as follows:

(1) When a crop of barley, oats, or wheat is the first seeded crop in a mixture of small grains seeded or volunteered at different times, the mixture is considered to be the crop of barley, oats, or wheat which is first seeded.

(2) When corn or grain sorghum is mixed with another crop in the same row, the mixture shall be considered to be corn or grain sorghum, as applicable.

§ 1413.5 [Reserved]

§ 1413.6 Farm program payment yields.

(a) *Rice, upland cotton, barley, corn, grain sorghum, oats, and wheat yields.*

(1) The bushel or pound per acre farm program payment yield for the 1986 and 1987 crop years shall be established in accordance with instructions issued by the Deputy Administrator and shall be the average of the farm program payment yields for the farm for the 1981 through 1985 crop years, excluding the year in which such yield was the highest and the year in which such yield was the lowest.

(2) If no farm program payment yield for a crop was established for any of the 1981 through 1985 crop years, the county committee may assign a yield in accordance with instructions issued by the Deputy Administrator for any such year based upon the farm program payment yields for similar farms in the county or other surrounding area.

(3) The bushel or pound per acre farm program payment yield for the 1988, 1989, and 1990 crop years shall, as announced by CCC:

(i) Be equal to the farm program payment yield established for the farm in the 1986 and 1987 crop years; or

(ii) Be established in accordance with instructions issued by the Deputy Administrator. Such instructions shall provide that the farm program payment yield shall equal the yield per harvested acre for the crop for each of the five immediately preceding crop years, excluding the crop year with the highest yield per harvested acre, the crop year with the lowest yield per harvested acre, and any crop year in which the crop was not planted on the farm. For purposes of this paragraph, the yield per harvested acre shall mean:

(A) With respect to the 1983 through 1985 crop years, the farm program payment yield for the crop;

(B) With respect to the 1986 crop year, the larger of the farm program payment yield for the crop or 90 percent of the 1985 farm program payment yield for the crop; and

(C) With respect to the 1987 and subsequent crop years:

(*1*) The actual yield per harvested acre; or

(*2*) If the actual yield per harvested acre is not available, the county committee may assign the farm a yield for the farm on the basis of actual yields for the crop for such crop year on similar farms in the area.

(b) *ELS Cotton.* The yield in pounds per acre for the current year shall be the average of the actual yields per harvested acre for the farm for the 3 preceding years, adjusted as follows:

(1) If no acreage of the crop was grown on the farm for a year, a yield for the crop shall be assigned by the county committee for the farm for such year based upon the actual yields for similar farms in the county or surrounding area;

(2) If any yield in the 3-year period preceding the current year is affected adversely as the result of a natural disaster or other condition beyond the producer's control, the county committee may adjust the yield for any such year upward to the simple average of the highest 4 actual yields of the most recent 5 years; and

(3) The Deputy Administrator may prescribe a limitation on the amount by which an ELS cotton yield may be reduced from one year to the next year.

(c) *Yield reduction.* For the purpose of determining the amount of any deficiency payment as provided in § 1413.108 or the amount of any disaster payment as provided in §§ 1413.130 and 1413.131, the farm program payment yield for a farm shall be reduced in accordance with instructions issued by the Deputy Administrator to reflect:

(1) Any reduction in the current year's yield for such farm which is the result of causes other than a natural disaster or other condition beyond the producer's control, such as a change in farming practice; or

(2) The inclusion in the farm program acreage of an acreage of nonprogram crops or conserving uses in accordance with § 1413.108(b)(2) provided that such acreage would not normally produce the farm program payment yield for the applicable crop of rice, upland cotton, feed grains, or wheat.

(d) *Reports of production and supporting evidence.* A report of production is required to determine the actual yield per harvested acre for ELS cotton for the 1986 through 1990 crop years and, if applicable in accordance with paragraph (a) of this section for rice, upland cotton, feed grains, and wheat for the 1987 through 1990 crop years. Such report shall be made in accordance with instructions issued by the Deputy Administrator and on forms prescribed by the Deputy Administrator. When production has been disposed of through commercial channels, the county committee may require the operator or other producers to furnish documentary evidence in order to verify the information provided on the report. Acceptable evidence may also include such items as the original or a copy of commercial receipts, gin records, CCC loan documents, settlement sheets, warehouse ledger sheets, elevator receipts or load summaries. The county committee may also verify the evidence submitted by the producer with the warehouse, gin, or other entity which received production. If the evidence is not furnished or the information provided on the report cannot be verified, the county committee may disapprove the report of production.

(e) *Unrepresentative acreage.* If the crop acreage for a year is less than 50 percent of the acreage base for the crop, the county committee may determine, in accordance with instructions issued by the Deputy Administrator, that the actual yield for the year is unrepresentatively high and reduce the yield accordingly. Such reduced yield shall be used to compute actual harvested yields in accordance with paragraph (a)(3) of this section or for ELS cotton yields in accordance with paragraph (b) of this section.

(f) *Fees for proven yields.* A producer shall pay to CCC a service fee for each actual yield computed for a farm for a crop of barley, corn, grain sorghum, oats, rice, upland cotton, ELS cotton, or wheat to be used in computing a proven yield in accordance with this section. The amount of the fees shall be determined and announced by the Executive Vice President, CCC, or the Executive Vice President's designee.

[51 FR 36905, Oct. 16, 1986. Redesignated at 53 FR 20290, June 3, 1988, and amended at 55 FR 1571, Jan. 17, 1990]

§ 1413.7 Crop acreage bases.

(a) An acreage base shall be established for a farm for each year beginning with 1986 for barley, corn, grain sorghum, oats, rice, upland cotton, ELS cotton, and wheat.

(b) Except as provided in paragraphs (e) and (f) of this section, the crop acreage bases for any farm for the 1986 and subsequent crops of barley, corn, grain sorghum, oats, and wheat shall be the average of the acreage planted and considered planted to such program crop on the farm in the base period.

(c) For upland cotton and rice, except as provided in paragraphs (d), (e), and (f) of this section, the crop acreage base shall be equal to the average of the acreages planted and considered planted in the base period, excluding years in which no planted and considered planted acreage has been determined for the farm.

(d) Any crop acreage base established in accordance with paragraph (c) of this section shall not exceed the average of the acreages planted and considered planted to the crop in the two crop years of the base period immediately preceding the current crop year, if an acreage of the crop was not planted or considered planted during one or more years of the base period.

(e) If the county committee determines that a crop is grown on a farm in a clearly established crop-rotation pattern for 2 or more years, the acreage base established for such crop will be determined by using the average of the planted and considered planted acreages for the 3 immediately preceding crop years in the rotation cycle that correspond to the current year and in accordance with instructions issued by the Deputy Administrator.

(f) The sum of the crop acreage bases for a farm for a crop year shall not exceed the cropland for the farm, except to the extent that such excess is due to an established practice of doublecropping as determined in accordance with instructions issued by the Deputy Administrator. If the sum of such crop acreage bases exceeds the cropland, the operator will be given the opportunity to reduce one or more crop acreage bases. If the operator fails to make such a reduction, such a reduction shall be made in accordance with instructions issued by the Deputy Administrator.

(g) The crop acreage base established for a crop of ELS cotton on a farm shall be the average of the planted and considered planted acreages for ELS cotton for the 3 years immediately preceding the year prior to the current year.

(h) Corn and grain sorghum crop acreage bases shall be combined for purposes of determining the total permitted acreage which may be planted on a farm to corn or grain sorghum, or to both such crops. No other crop acreage bases shall be combined for such purposes.

[51 FR 36905, Oct. 16, 1986. Redesignated at 53 FR 20290, June 3, 1988, and amended at 55 FR 1571, Jan. 17, 1990]

§ 1413.8 Farm acreage bases.

(a) For the 1986 crop year, a farm acreage base shall not be established for any farm.

(b) For 1987 and subsequent crop years, a farm acreage base shall be established for each farm for each such crop year when one or more crop acreage bases are established for the farm for crops of wheat, feed grains, upland cotton, and rice. Such farm acreage base shall equal the sum of:

(1) The crop acreage bases established for such crop year for wheat, feed grains, upland cotton, and rice;

(2) The average of the acreages planted to soybeans for harvest in 1986 and subsequent crop years; and

(3) The average of acreages devoted to a conserving use in 1986 and subsequent crop years, excluding acreages considered in computing crop acreage bases.

(c) In no case may the farm acreage base for a farm for a crop year exceed the cropland for the farm for such crop year, except to the extent that such excess is due to an established practice of doublecropping as determined in accordance with instructions issued by the Deputy Administrator.

§ 1413.9 Normal crop acreages.

The normal crop acreage (hereinafter called "NCA") is the average of the sum of the acreages for the farm during a period of the NCA crops as designated by the Secretary of Agriculture in an announcement which establishes an NCA requirement for the crop year.

§ 1413.10 Notice of crop and farm acreage bases, yields, and NCA.

The operator of a farm shall be notified in writing of the crop acreage bases, yields, and, if applicable, the farm acreage base and/or NCA which are established for the farm. However, no such notice shall be mailed to any producer who has on file in the county office a request in writing thst such producer not be furnished with the notice. Such a producer shall be considered as having been notified timely and correctly of the contents of the notice.

§ 1413.11 Reconstitution of farms.

(a) Farms shall be reconstituted in accordance with Part 719 of this chapter.

(b) The actual yield established and the yield established by the county committee for any crop for a farm resulting from a combination of farms or portions of farms shall not, except for rounding, exceed the weighted average of the applicable yields established for the component portions of such farm.

(c) The weighted average of the actual yield established and the yield established by the county committee for any crop for a farm resulting from a division of a farm shall not, except for rounding, exceed the applicable yields established for the parent farm before the division of such farm.

(d) In determining the weighted average yields determined in accordance with paragraphs (b) and (c) of this section, the crop acreage base for the farm for the current year shall be used.

§ 1413.12 Adjusting crop acreage bases.

(a) *Adjustments using farm acreage base.* (1) With respect to the 1987 and subsequent crop years, if determined and announced by the Secretary, an operator of a farm may adjust acreage bases established for crops of wheat, feed grains, upland cotton, and rice in accordance with paragraphs (a)(2) through (a)(4) of this section.

(2) Within 15 days from the day the county committee issues a notice of the crop and farm acreage bases established for the farm for such crop year, the operator must file with the county committee a request for an adjustment of such bases.

(3) Any upward adjustment in the acreage base established for one crop must be offset by an equivalent total downward adjustment in the acreage bases established for such crop year for one or more other crops produced on the farm.

(4) Any increased adjustment of a crop acreage base established for a farm shall not exceed 10 percent of the farm acreage base. If more than one crop acreage base is increased, the total of such increases shall be limited to 10 percent of the farm acreage base.

(5) A crop acreage base of zero shall not be increased under this section.

(b) *Other adjustments.* The acreage base established for a crop of a commodity produced on the farm may be adjusted in accordance with instructions issued by the Deputy Administrator:

(1) If, in accordance with the regulations set forth at Part 780 of this chapter, it is determined that the acreage base previously established for a crop of a commodity produced on the farm is not representative of the current operator's normal farming operations on the farm; or

(2) When the county committee approves a recomputation of the acreage base established for the crop of a commodity produced on the farm in an amount not to exceed the planted and considered planted acreages for the farm for 1 or more previous years.

(c) *Changes from rotation to regular or vice versa.* The operator of a farm may request that the acreage base for a crop of a commodity produced on a farm be established in accordance with either § 1413.7(e) or § 1413.7 (b) through (d). Such a request shall not increase the acreage base for such crop in the current year. The county or State committee may approve an increase in the acreage base established for such crop in future crop years in accordance with instructions issued by the Deputy Administrator.

(d) Crop acreage bases established in accordance with 7 CFR 1413.7 may be adjusted in accordance with instructions issued by the Deputy Administrator to reflect the amount of high residue crops which must be planted by producers on the farm in order to comply with the approved conservation plan for the farm.

(e) *Reductions.* If the county committee determines that an adequate supply of irrigation water is a prerequisite for growing the crop of a commodity produced on the farm, the county committee shall reduce the acreage base established for such a crop for a crop year to the extent that irrigation water is not available.

[51 FR 36905, Oct. 16, 1986, as amended at 51 FR 39482, Oct. 28, 1986; 52 FR 10727, **Apr. 3, 1987; 53 FR 3858, Feb. 10, 1988. Redesignated at 53 FR 20290, June 3, 1988]**

§§ 1413.13—1413.48 [Reserved]

§ 1413.49 Nature of contract.

(a) The contract shall provide that the operator and each producer on the farm shall agree to limit the acreage of the crop planted for harvest and devote an eligible acreage of land to approved conservation uses as may be required by the commodity program for the crop as announced by the Secretary and as provided in this part. The contract shall provide for recording the shares for division of payments for the crop. The operator shall agree to file timely a report of acreage on Form ASCS-578 accurately listing the ACR acreage and the planted acreage of the program crop(s) planted for harvest on the farm, and such other acreages as are subject to the terms and conditions of the contract.

(b) CCC shall agree that harvested production of the crop shall be eligible for loans and purchases in accordance with Parts 1421 and 1427 of this title. CCC shall also agree that deficiency payments, if it is determined that a final deficiency payment will be greater than zero, and any applicable diversion payments, disaster payments, or wheat grazing and hay payments shall be made to such operator and producers.

(c) The contract shall contain such other provisions as CCC determines appropriate to carry out programs established by this part.

(d) The contract shall provide for the payment of liquidated damages in the event that the operator or any other producers fail to comply with their obligations under the contract. The purpose of an acreage reduction, set-aside, land diversion, or wheat grazing and hay program is to obtain a reduction of acreage from the production of the applicable crops of commodities in order to adjust the total national acreage of such commodities to desirable goals. Once a contract has been entered into between CCC and producers, the Department and other segments of the agricultural community act based upon the assumption that the contract will be fulfilled and the reduction in acreage will be obtained. The actions of CCC include budgeting and planning for programs in subsequent crop years. A producer's failure to comply with a contract undermines the basis for these actions, damages the credibility of the Department's programs with other segments of the agricultural community, and requires additional expenditures in subsequent crop years to offset the effect of the increased production in the current crop year. While the adverse effects on CCC of the producer's failure to comply with a contract are obvious, it would be impossible to compute the actual damages suffered by CCC.

§ 1413.50 Contracting procedures.

(a) *Signup*—(1) *Acreage reduction and paid land diversion programs.* Eligible producers may offer to enter into a contract with CCC by executing a contract and submitting it to the county ASCS office where the records for the farm are maintained not later than a date specified in the announcement of the acreage reduction and paid land diversion program.

(2) *"0/92" provisions.* Eligible producers of the 1988 crops of wheat and feed grains may offer to devote all or a portion of the permitted acreage of such crops on a farm to conserving uses and designate such acreage as either wheat or feed grains, as applicable, by submitting an offer to CCC in the manner prescribed by CCC in Form CCC-477 and any appendix and addendum thereto. Such offer must be submitted to the county ASCS office where the farm records are maintained not later than a date specified in the announcement of the availability of such provisions. Offers may be accepted by CCC without modification by CCC. However, if the total acreage offered to be devoted to approved conserving uses in accordance with this section and the total amount of any acreage projected by CCC to be removed from production in accordance with an acreage reduction program, a paid land diversion program, and the Conservation Reserve Program is determined to have an adverse effect on agribusiness and other agriculturally related economic interests within a county, state, or region, CCC may reject an offer and may also submit a modified offer to the producer. CCC's modified offer shall be delivered by certified mail to the producer and, in addition to the details of CCC's offer, shall specify that the producer has a right to reject CCC's offer in writing by the date specified by CCC. In the event the producer does not reject CCC's offer by such date, the offer shall be deemed to have been accepted by the producer.

(b) *Extension of signup.* The signup period determined and announced in accordance with subsection (a) of this section may be extended for a producer or for all producers within a designated area under the terms and conditions announced by CCC in the event of the occurrence of a condition which is beyond the control of producers if CCC determines that such an extension will not affect adversely the administration of the respective program.

(c) *Producer eligibility.* (1) The producer must be a person who shares in the risk of producing the program crop produced in the current year, or shares in the proceeds therefrom, on the farm for which the contract is submitted, or would have shared in the crop if it had been produced on such farm in the current year. The county committee shall determine who is a person in accordance with Part 795 of this chapter and instructions issued by the Deputy Administrator.

(2) A minor will be eligible to participate in the program only if one of the following conditions exists:

(i) The right of majority has been conferred upon the minor by court proceedings;

(ii) A guardian has been appointed to manage the minor's property and the applicable documents are signed by the guardian; or

(iii) A bond is furnished under which a surety guarantees to protect CCC from any loss incurred for which the minor would be liable had the minor been an adult.

(d) A producer who executes a Form CCC-477 in order to participate in the 1990 Wheat Price Support and Production Adjustment Program may execute an addendum to such Form which sets forth the terms and conditions by which a producer may plant wheat in excess of the permitted wheat acreage for the farm and receive reduced wheat deficiency payments with respect to such farm.

[51 FR 36905, Oct. 16, 1986, as amended at 53 FR 3858, Feb. 10, 1988. Redesignated at 53 FR 20290, June 3, 1988, and amended at 55 FR 1571, Jan. 17, 1990]

§ 1413.51 Required acreage reduction.

(a) The Secretary will announce:

(1) Whether an acreage reduction program is in effect for a crop year for a specific crop;

(2) The percentage reduction to be applied to the crop acreage base to determine the amount of required reduction; and

(3) Other requirements of the program for the year.

(b) Producers of the applicable crop or crops shall:

(1) Not knowingly exceed the permitted acreage, which is the acreage base established for the crop minus the sum of the acreage required to be devoted to ACR in accordance with an acreage reduction program and minus any acreage which is required to be devoted to ACR in accordance with a land diversion program;

(2) Devote to conservation uses as prescribed in §§ 1413.60 through 1413.74 an acreage equal to the reduced acreage, or, as determined in accordance with instructions issued by the Deputy Administrator, a proportionately smaller acreage if the planted acreage is smaller than the permitted acreage; and

(3) Otherwise comply with all program requirements.

§ 1413.52 Required set-aside.

(a) The Secretary will announce:

(1) Whether a set-aside requirement is in effect for a crop year for a specific crop of feed grains or wheat;

(2) The percentage of the planted crop acreage that is required to be set aside; and

(3) Whether producers on a farm are required not to exceed the NCA established for the farm, less any acreage which is devoted to conservation uses under any program and any wheat grazing and hay acreage; and

(4) Other requirements of the program for the year.

(b) Producers of the applicable crop or crops shall:

(1) Not knowingly exceed the NCA requirements, if applicable;

(2) Devote to conservation uses as prescribed in §§ 1413.60 through 1413.74 an acreage equal to the set-aside requirement, and

(3) Otherwise comply with all program requirements.

§ 1413.53 Land diversion.

(a) The Secretary will announce:

(1) Whether a land diversion program is in effect for a crop year for a specific crop;

(2) The percentage of the planted crop acreage or of the crop acreage base that producers are required to divert from the production of the crop under the program;

(3) The payment rate;

(4) Whether advance program payments will be available;

(5) Whether compliance with the land diversion requirement is required in order for the producer on the farm to be eligible for loans, purchases and payments for the crop; and

(6) Other requirements of the program.

(b) In order to be eligible for any land diversion payment, producers of the applicable crop or crops shall:

(1) Comply with all other program requirements for the crop;

(2) Devote to conservation uses as prescribed in §§ 1413.60 through 1413.74 an acreage which is equal to the required diverted acreage.

§ 1413.54 Wheat grazing and hay.

(a) The Secretary will announce whether a wheat grazing and haying program is offered for a crop year and the applicable payment rate.

(b) In order to be eligible for payment under the wheat grazing and hay program for a crop year, producers of wheat shall do all of the following:

(1) Graze or cut for green chop, hay, or silage, immature wheat that was planted for harvest as grain;

(2) Report the acreage for grazing and hay on Form ASCS-477;

(3) Complete the cutting or grazing to the point that the wheat is substantially destroyed by the disposal deadline; and

(4) Comply with all other program requirements for the crop.

(c) In no event can producers receive a payment under the wheat grazing and hay program on more than the larger of:

(1) 50 acres; or

(2) 40 percent of the total acreage on the farm of barley, corn, grain sorghum, oats, upland cotton, and wheat which is intended for harvest in the current year.

§ 1413.55 Loan deficiency program.

(a) The Secretary will announce whether loan deficiency payments will be made available to producers on a farm for a specific crop for a crop year.

(b) Loan deficiency payments on wheat, feed grains, rice and 1986 crop of upland cotton.

(1) In order to be eligible to receive loan deficiency payments if such payments are made available for a crop of wheat, feed grains, rice, or the 1986 crop of upland cotton, the producer of such commodity must:

(i) Comply with all of the program requirements to be eligible to obtain loans or purchases in accordance with Parts 1421 and 1427 of this title;

(ii) Agree to forego obtaining such loans or purchases; and

(iii) Otherwise comply with all program requirements.

(2) The loan deficiency payment applicable to a crop of wheat, feed grains, rice, or the 1986 crop of upland cotton shall be computed by multiplying the loan payment rate, as determined in accordance with paragraph (d) of this section, by the quantity of the crop the producer is eligible to pledge as collateral for a price support loan in accordance with Parts 1421 and 1427 of this title but not to exceed the product obtained by multiplying:

(i) The individual farm program acreage for the crop determined in accordance with § 1413.108 by

(ii) The farm program payment yield for the farm provided in § 1413.6.

(c) Loan deficiency payments on 1987 and subsequent crops of upland cotton.

(1) In order to be eligible for any loan deficiency payments if such payments are made available for a crop of upland cotton, the producer must:

(i) Comply with all of the program requirements to be eligible to obtain loans in accordance with Part 1427 of this title;

(ii) Agree to forego obtaining such loans on the quantity of upland cotton with respect to which a loan deficiency payment is requested; and

(iii) Otherwise comply with all program requirements.

(2) The loan deficiency payment applicable to a crop of upland cotton shall be computed by multiplying the loan payment rate, determined in accordance with paragraph (c) of this section, by the quantity of the crop eligible to be pledged as collateral for a price support loan in accordance with Part 1427 of this title but with respect to which the producer agrees to forego obtaining such loan, but not to exceed the product obtained by multiplying:

(i) The individual farm program acreage for the crop determined in accordance with § 1413.108 by

(ii) The farm program payment yield for the farm provided in § 1413.6.

(d) The loan payment rate for a crop shall be the amount by which the level of price support loan originally determined for the crop exceeds the level at which CCC has announced, in accordance with Parts 1421 and 1427 of this title, that producers may repay their price support loans.

(e) With respect to upland cotton, an amount not to exceed one-half of such payment may be made and, with respect to rice, an amount not to exceed one-half of such payment shall be made in accordance with Part 770 of this chapter.

[52 FR 25354, July 7, 1987. Redesignated at 53 FR 20290, June 3, 1988]

§ 1413.56 Inventory reduction program.

(a) The Secretary will announce whether an inventory reduction program is in effect for a crop year for a specific crop for producers on a farm.

(b) In order to be eligible for any inventory reduction payments, the producer must:

(1) Comply with all of the program requirements to be eligible to obtain a loan or purchase agreement in accordance with Parts 1421 or 1427 of this title, as applicable;

(2) Agree to forego obtaining such loans or purchases;

(3) Agree to forego receiving deficiency payments made in accordance with § 1413.108;

(4) Limit the acreage of the crop planted for harvest to the crop acreage base reduced by one-half of the acreage required to be diverted from production in accordance with any acreage reduction and/or land diversion program for the crop; and

(5) Otherwise comply with all program requirements.

(c) Inventory reduction payments shall be computed in the same manner as set forth in § 1413.55 (b) and (c). Such payments shall be made in accordance with Part 770 of this chapter.

§ 1413.57 Reduction in acreage to be devoted to conservation uses.

(a) A producer whose payments under the feed grain, rice, upland and ELS cotton, or wheat programs may be reduced because of the application of the provisions with respect to the payment limitation as specified in accordance with Part 795 of this chapter may request a downward adjustment in the amount of acreage which is otherwise required to be devoted to conservation uses on the farm. The request shall be in writing and shall be filed with the county committee on a form and by a date prescribed by the Deputy Administrator. If such a producer is sharing in program payments with respect to farms in two or more counties, it shall be the producer's responsibility to furnish information concerning the producer's participation in the other counties to the county committee with which the application for the downward adjustment is filed.

(b) Any reduction in ACR acreage required under this section shall be computed by: (1) estimating the producer's total payments which would be received under the feed grain, rice, upland and ELS cotton, and wheat program on all farms, (2) determining the percentage by which the estimated total payments must be reduced in order to comply with the payment limitation, and (3) multiplying such percentage by the number of acres in the producer's portion of the ACR acreage which is required for the farm or farms participating in the programs. When both land diversion and acreage reduction or set-aside programs are in effect, the acreage required to be devoted to ACR in accordance with the acreage reduction or set-aside programs shall be reduced to zero before the acreage to be devoted to ACR in accordance with the land diversion acreage is reduced.

(c) If the producer is participating in the acreage reduction or set-aside program on two or more farms, the producer may elect to have the reduction in ACR acreages under these programs, but not under the land diversion programs, divided among the farms in such proportion as the producer may designate.

§ 1413.58 Bid diversion program.

(a) When there is a production control or loan program in effect for a crop of a major agricultural commodity, the Secretary may determine and announce that the program is being reopened to participating producers for the purpose of accepting bids for the conversion of acreage planted to such crop to diverted acres.

(b) If a determination is made in accordance with paragraph (a), the Executive Vice President, CCC, shall announce the manner in which bids for participation in the program shall be made and the manner in which the program shall be conducted. Such determinations shall include the following:

(1) The period of time during which bids may be submitted;

(2) The form of the bid, i.e. whether the bid shall be as a percentage of the farm program payment yield for the farm, as a number of pounds or bushels per acre, or such other form as may be determined and announced;

(3) The basis for evaluating bids; including any limitation upon the number of acres that may be accepted;

(4) The manner in which payments will be made to producers whose bids are accepted; and

(5) Other requirements of the program.

(c) The operator of a farm and any other producers on the farm may submit a bid for a contract with CCC on a form prescribed by CCC. To be eligible to submit a bid, the operator and any other producers on the farm must be parties to a contract to participate in the program for the applicable commodity for the crop year for the farm and must not have been determined to be in violation of such contract.

(d)(1) The contract to participate in the bid diversion program may contain requirements as to the eligibility of acres planted to the crop, the time and manner by which the growing crop must be destroyed, limitations on the use of the acreage and the crop residue, provision for assessing liquidated damages in the case of violation of the contract, and such other provisions as may be necessary for effective operation of the program. The bid may be submitted to the appropriate county ASCS office prior to the close of business on a date to be announced by the Executive Vice President, CCC.

(2) If a bid diversion program is offered for more than one commodity, the operator and any other producers may select the commodities to be included in the bid, except that CCC may require that the bid include either both crops or neither crop of corn and grain sorghum, or barley and oats.

(3) After the final date for submitting bids, the bids in each county shall be ranked for each commodity, treating corn and grain sorghum or barley and oats as single commodities, if so required by CCC, on the basis of the percentage of the farm program payment yield, with the lowest percentage being ranked highest, or such other basis as announced by the Secretary. In the case of identical bids, such bids shall be ranked in the order received or, where an appointment procedure was utilized by the county ASCS office during the time in which producers submitted bids, a lottery shall be conducted to determine the order by which such bids should be ranked. The bids for each commodity shall then be accepted in rank order. CCC may establish the number of acres for which bids will be accepted for each commodity in each county.

(4) To the extent practicable, any questions as to the content of the bid shall be resolved by the county committee when bids are opened. Any decision by the county committee may be appealed as provided in § 1413.155. If an appeal is resolved in the producer's favor, the bid may then be accepted without regard to whether accepting such bid would result in exceeding the maximum number of acres which may be enrolled in the program as established for the county.

(e) In accordance with the regulations in Part 795 of this chapter, the total amount of payments which a person shall be entitled to receive annually in accordance with the diversion program described in this section shall not exceed $20,000 per commodity. CCC may require that corn and grain sorghum shall be considered as one commodity, that barley and oats shall be considered as one commodity, or that all such commodities shall be considered as one commodity.

[51 FR 39482, Oct. 28, 1986; 52 FR 10727, Apr. 3, 1987. Redesignated at 53 FR 20290, June 3, 1988]

§ 1413.59 [Reserved]

§ 1413.60 Basic rules for ACR acreage.

Except as set forth in §§ 1413.65-1413.74, or as announced by the Secretary, ACR acreage which is designated in accordance with the provisions of §§ 1413.51 through 1413.53 must:

(a) Be eligible land in accordance with § 1413.61;

(b) Meet minimum size and width requirements as specified in Part 718 of this chapter;

(c) Be devoted to approved cover or practices in accordance with the provisions of § 1413.62;

(d) Not be grazed or harvested, except as provided in § 1413.63; and

(e) Be cared for in accordance with the provisions of § 1413.64.

§ 1413.61 Eligible land.

(a) For 1986 and subsequent crop years, land designated as ACR acreage must:

(1) Meet one of the provisions of paragraph (b) of this section, and

(2) Meet all provisions of paragraph (c) of this section.

(b) ACR acreage must be cropland that:

(1) Is not in a summer fallow rotation and was devoted to small grains, row crops, or other crops planted annually in 2 of the 3 immediately preceding years. Land that was designated as ACR acreage or conservation use acreage under a production adjustment program will be considered as planted acreage in the year designated, except that land which is designated in accordance with paragraph (b)(3) of this section and which was not devoted to small grains or row crops in the immediately preceding year, land on which water storage systems are installed, and land on which orchards were planted may not be so considered;

(2) Is in a summer fallow rotation as shown by the past history of crops produced on the farm if the land was devoted to small grains, row crops, or other crops planted annually in 1 of the 2 immediately preceding years, or was considered to have been so cropped;

(3) Is currently devoted to, and in at least 2 of the 3 immediately preceding years was devoted to, grasses or legumes for the production of hay, seed, or pasture in rotation with small grains or row crops if the acreage devoted to such grasses or legumes and designated as ACR equals or exceeds acreage newly seeded to such grasses or legumes:

(i) In the summer or fall of the preceding year or seeded in the spring of the current year; and

(ii) On cropland that would have been eligible for designation as ACR acreage under paragraph (b)(1) of this section; or

(4) Does not meet the requirements of paragraph (b)(1) of this section if the ACR acreage requirement exceeds the total of all of the cropland, including the cropland planted in the current year which is eligible to be designated according to paragraph (b)(1) of this section, and such cropland is designated as ACR acreage in the following order:

(i) All cropland eligible under paragraph (b)(1) of this section even though such cropland may already have been planted in the current year;

(ii) All cropland that was devoted to small grains or row crops in 1 of the last 3 years; and

(iii) All cropland that was not devoted to small grains or row crops in the last 3 years.

(c) Land designated as ACR acreage may not be land:

(1) That is designated:

(i) Under the Water Bank Program in accordance with Part 752 of this chapter;

(ii) Under the Great Plains Conservation Program in accordance with Part 631 of this title;

(iii) Under the Conservation Reserve Program set forth in accordance with Part 704 of this chapter;

(iv) As ACR acreage for another program crop;

(2) For which a deficiency payment is or could be made for the program crop;

(3) That is acreage credited to the crop in accordance with § 1413.102;

(4) Used as turn areas, except that these areas may be designated if both of the following apply:

(i) Minimum size requirements as specified in Part 718 of this chapter are met; and

(ii) The county committee determines that the areas are normally planted to a crop;

(5) That is determined to be ineligible in accordance with § 1413.97; or

(6) That is flooded or under water at any time during the year unless one of the following applies:

(i) Before any flooding occurred, the land was planted or could have been planted to a crop for harvest in the current crop year;

(ii) After being flooded, such land could be planted in the current year by no later than the final reporting date for spring-seeded crops.

§ 1413.62 Approved cover crops and practices.

(a) *Establishing and maintaining cover crops or practices.* (1) An approved cover crop or practice shall be established on acreage which is designated as ACR acreage by the end of the planting season for spring-seeded crops. Such cover crop or practice shall be maintained through the end of the calendar year except as follows:

(i) The ACR acreage may be seeded in the fall to crops which are of a type that when seeded in the fall in the county in which the farm is located normally attain maturity in the next calendar year;

(ii) The ACR acreage may be tilled in the fall for spring planting and left bare only if approved in accordance with paragraph (c) of this section; and

(iii) If the ACR acreage is used for nonagricultural purposes, the cover crop or practice must be maintained through the end of the nongrazing period established for ACR acreage.

(b) *Nationally approved cover crops and practices.* The following are nationally approved cover crops and practices for ACR acreage:

(1) Annual, biennial, or perennial grasses and legumes, excluding soybeans, corn, popcorn, sweet corn, grain sorghum, cotton, and vegetables.

(2) Barley, oats, rice, wheat, and other small grains planted and disposed in accordance with instructions issued by the Deputy Administrator.

(3) Crop residue from using "no till" or "minimum till" practices.

(c) *Locally approved cover crops.* Cover crops and practices that will protect the ACR acreage from wind and water erosion throughout the calendar year may be approved on a State or local basis as follows:

(1) The county committee, in consultation with the district conservationist of the Soil Conservation Service ("SCS"), may recommend the cover crop or practice. The State committee shall consult with appropriate wildlife agencies and organizations and other interested groups to determine whether additional practices that further the goals of such organizations and groups can be developed.

(2) The cover crops or practices recommended shall not include:

(i) The growing of soybeans, corn, popcorn, sweet corn, grain sorghum, cotton, and vegetables.

(ii) Control measures which are more costly to the producer than other similar alternatives normally accepted for the area.

(iii) Control measures which are inconsistent with erosion control measures normally used on other cropland in the area.

(3) Residue and stubble of destroyed program crops may be recommended, provided that the crop residue, as opposed to regrowth, shall not be grazed after the end of the nongrazing period announced by the county committee in accordance with § 1413.63(b).

(4) The State committee shall approve the cover crops or practices after consulting the SCS State Conservationist as to whether the practices will sufficiently protect the land from wind and water erosion.

§ 1413.63 Use of ACR acreage.

(a) *Haying and grazing.* Haying and/or grazing of acreage devoted to conservation uses and designated as ACR shall be allowed except for a consecutive 5-month period between April 1 and October 31 as established by the State committee unless it has been determined by the Secretary, or a designee of the Secretary, that such haying and/or grazing would have an adverse economic effect.

(b) *Harvesting.* Except as provided in paragraphs (a) and (d) of this section and § 1413.72, harvesting on ACR acreage is prohibited for all crops:

(1) In the current year; and

(2) After December 31 of the current year if the crop would normally mature and be harvested in the current year.

(c) *Other uses.* (1) Removing catfish, crayfish, and other fish for commercial purposes is prohibited during any period during which haying and/or grazing is prohibited in accordance with paragraph (a) of this section.

(2) The ACR acreage may be used for noncommercial recreation, temporary location of beehives, or for home gardens. Fees may be charged for hunting and fishing.

(d) *Emergency uses.* Notwithstanding the provisions of § 1413.63 (a) through (c), the Deputy Administrator may authorize, on a county by county basis, the use of the ACR acreage for haying or grazing under such conditions as may be prescribed when abnormal weather conditions cause a critical shortage of hay and forage in the county.

[51 FR 36905, Oct. 16, 1986, as amended at 51 FR 39483, Oct. 28, 1986; 52 FR 10727, Apr. 3, 1987; 53 FR 3859, Feb. 10, 1988. Redesignated at 53 FR 20290, June 3, 1988]

§ 1413.64 Control of erosion, insects, weeds, and rodents on ACR acreage.

(a) The farm operator shall use needed control measures in a timely manner to control erosion, insects, weeds, and rodents on the ACR acreage.

(b) Control measures for weeds need only be sufficient to prevent the spread of weeds. These measures must be consistent with control practices normally carried out on similar cropland in the area. It is not intended that control practices be more costly to the producer than what is normal for the area.

(c) The county committee shall prescribe and require additional control measures upon a determination that those used by the producer are inadequate. When clipping or mowing to control weeds is prescribed, the county committee shall specify a time for clipping or mowing which is compatible with wildlife practices, but such time must be before the time such weeds form seeds.

§ 1413.65 Orchards.

Unless the State committee determines otherwise, the entire area of an orchard or nursery meeting the minimum size requirements specified in Part 718 of this chapter is eligible to be designated as ACR if the trees were planted in the current year or fall of the previous year. The land also must meet the eligibility requirements of § 1413.61.

§ 1413.66 Land going out of agricultural production.

If the county committee determines that the designated ACR acreage may be devoted to a nonagricultural use during the current year, the operator must establish that the land, in the absence of the program, would have been planted to a program crop.

§ 1413.67 Emergency grazing or harvesting.

ACR acreage may be hayed or grazed in emergency conditions in accordance with guidelines issued by the Deputy Administrator.

§ 1413.68 Wildlife food or habitat.

(a) Land devoted to wildlife food plots that meets requirements determined by the State committee, in consultation with wildlife agencies, is eligible to be designated as ACR acreage. Program crops may be grown on such acreage and small grains need not be disposed of by the disposal deadline. However, there must also be compliance with the requirements of § 1413.61.

(b) Land which is owned or operated by State or Federal agencies and which is planted to grain for wildlife for the agency is not eligible to be designated as ACR acreage.

§ 1413.69 Noncrop uses or practices.

(a) The uses and practices listed in paragraph (b) of this section are eligible for ACR acreage if:

(1) Such uses and practices are installed on acreage that is otherwise eligible as provided in § 1413.61; and

(2) The requirements in §§ 1413.62 and 1413.63 are met.

(b) The following uses and practices are eligible on ACR acreage:

(1) Trees or shrubs planted for any purpose other than orchards or vineyards;

(2) Terraces and sod waterways;

(3) Water storage developed for any purpose, including fish or wildlife habitat; or

(4) Filter strips used to reduce siltation in a stream or ditch.

§ 1413.70 Insufficient ACR acreage.

Before the final date for reporting crop acreage as provided in Part 718 of this chapter, producers may destroy crops on an acreage to do one of the following:

(a) Decrease the amount of program crop so that the ACR acreage available is sufficient; or

(b) Designate all or part of the destroyed acreage as ACR acreage. The acreage must be eligible land as provided in § 1413.61. The acreage shall be devoted to an approved cover or practice in accordance with the provisions of § 1413.62 as soon as practicable after destruction of the crop.

§ 1413.71 Destroyed crop acreage.

(a) Operators may substitute for the ACR acreage already designated and reported on Form ASCS-578 acreages of small grains or row crops that were destroyed. However, with respect to such substitution of acreages, the following conditions are applicable.

(1) The operator must request the substitution in writing and agree that there will be no deficiency payment made with respect to the production from the substituted acreage;

(2) The land must be determined to be eligible as provided in § 1413.61; and

(3) The land must be devoted to an approved cover or practice in accordance with the provisions of § 1413.62 as soon as practicable after the substitution.

(b) The substitution of acreages cannot be used to offset a payment reduction as a result of the application of the failure to comply fully provisions of Part 791 of this chapter.

§ 1413.72 Provisions applicable to certain small grains.

The following provisions are applicable with respect to 1986 ACR acreage only:

(a) Acreage which was devoted to wheat, barley, or oats and was growing before announcement by the Secretary of the 1986 programs for such crops may be designated as ACR acreage and may be harvested or grazed in accordance with the provisions of this section and § 1413.63. This provision shall be applicable only as specified in an announcement by the Secretary.

(b) The acreage shall be subject to the requirements for minimum size as specified in Part 718 of this chapter and the requirement for the care of ACR acreage as set forth in § 1413.64.

§ 1413.73 Late harvesting.

Harvesting of a crop on ACR acreage may be permitted when all of the following apply:

(a) The crop matured in the preceding year; and

(b) The county committee determines that:

(1) The crop was not harvested because of adverse weather or other conditions beyond the producer's control; and

(2) Harvesting will be completed as soon as practicable.

§ 1413.74 Skip rows.

The acreage between rows of the crop is eligible ACR acreage if:

(a) The skip is at least the larger of 4 normal rows or 160 inches from plant to plant, and

(b) The land meets the requirements for eligible land as set forth in § 1413.61 and use and care of the acreage as set forth in §§ 1413.63 and 1413.64.

§§ 1413.75—1413.96 [Reserved]

§ 1413.97 Ineligible land.

(a) Land described in paragraphs (b) through (f) of this section shall not be eligible for the following purposes:

(1) Payments under any program in accordance with this part;

(2) Designation as ACR; or

(3) Consideration as being planted to a crop in accordance with § 1413.102.

(b) Land which the producer does not own, lease or sharecrop.

(c) Land which the producer does not have authority to use for program crops, such as highway, railroad, or other right of way, airport buffer strips and other similar areas.

(d) Land which is subject to a restrictive easement on behalf of the Farmer's Home Administration which prohibits its use for program crops.

(e) Land that is flooded or under water at any time during the year unless one of the following applies:

(1) Before any flooding occurred, the land was planted or could have been planted to a crop for harvest in the current crop year.

(2) After flooding, such land could be planted in the current year by no later than the final reporting date for spring planted crops.

(3) Such land has been planted or considered planted in at least 2 of the last 5 years.

(f) Land that is going out of agricultural production during the current year unless the county committee determines that the land could have been planted to a program crop and that such crop could have been harvested.

[51 FR 36905, Oct. 16, 1986, as amended at **52 FR 30886, Aug. 18, 1987. Redesignated at 53 FR 20290, June 3, 1988**]

§ 1413.98 Participation in Conservation Reserve Program.

(a) Whenever the owner or operator of a farm signs a contract to participate in the Conservation Reserve Program formulated in accordance with sections 1231-1245 of the Food Security Act of 1985:

(1) The farm acreage base, if applicable, and the total of the crop acreage bases, acreage allotments, and marketing quotas established for the farm for the first crop year for which such contract is applicable shall be reduced in the same proportion as the ratio of the cropland taken out of production under the conservation reserve contract to the total cropland on the farm. If acreage bases, acreage allotments, and marketing quotas were established for more than one crop, the owner or operator shall determine which acreage bases, acreage allotments, or marketing quotas shall be reduced to achieve the total reduction required.

(2) The crop acreage bases established for the farm for each succeeding crop year for which the conservation reserve contract is in effect shall be:

(i) Computed in accordance with § 1413.7; and

(ii) Then reduced in accordance with instructions issued by the Deputy Administrator.

(3) The amount of the reduction made in accordance with paragraphs (a) (1) and (2) of this section shall be considered as planted to the applicable crop for the purpose of establishing future crop acreage bases.

(4) If there is a contract in effect between CCC and the producers with respect to the annual program for one or more of the crops for which the acreage base is reduced in accordance with paragraph (a)(1) of this section, the operator and producers shall have the option of:

(i) Complying with the contract using the acreage base for the crop after such reduction is determined; or

(ii) Canceling such contract without liability for liquidated damages.

(b) After the end of the period of a conservation reserve contract, the farm acreage base and crop acreage bases for the next crop year shall be computed in accordance with §§ 1413.7 and 1413.8.

§ 1413.99 Compliance with sodbuster and swampbuster provisions.

(a) Whenever a producer, or a person affiliated with a producer, is determined to be ineligible in accordance with Part 12 of this title, such producer shall be ineligible for any payments under this part and shall refund any payments already received in accordance with § 1413.103(e).

(b) Notwithstanding any other provisions of this part, any acreage of highly erodible land or converted wetland that is planted to crops in violation of the provisions of Part 12 of this title shall be disregarded in determining acreages planted for harvest, considered planted acreages, acreages devoted to nonprogram crops, and acreages devoted to conserving uses.

§ 1413.100 Cross compliance on the farm.

(a) Whenever an acreage reduction program is announced by the Secretary and the Secretary also announces that a limited cross compliance requirement will be in effect, as a condition of eligibility for loans, purchases and payments with respect to any crop of a commodity enrolled in the acreage reduction program, producers on a farm shall not plant an acreage of another commodity in excess of the crop acreage base established for that commodity for the farm, except as otherwise announced by the Secretary.

(b) With respect to feed grains and wheat, whenever a set-aside program is announced by the Secretary for one or more of such crops, compliance on the farm with any one commodity program (i.e., wheat or feed grains) may be required as a condition of eligibility for loans, purchases and payments made in accordance with the other commodity programs.

[51 FR 36905, Oct. 16, 1986, as amended at 52 FR 10728, Apr. 3, 1987. Redesignated at 53 FR 20290, June 3, 1988]

§ 1413.101 Offsetting compliance between farms.

(a) Whenever offsetting compliance requirements are made applicable to a crop program for the current year as announced by the Secretary the provisions of paragraphs (b) through (g) of this section shall be applicable.

(b) To be eligible for loans, purchases, and payments authorized for a crop when an acreage reduction or set-aside program is in effect for a crop of feed grains, ELS cotton, or wheat, the landlord, landowner, or operator shall assure that on any other farm in which the landlord, landowner, or operator has an interest as landlord, landowner, or operator, the total acreage of the crop on the farm does not exceed the crop acreage base established for such crop.

(c) To be eligible for loans, purchases, and payments authorized for an NCA crop when compliance with the NCA is required for a crop of wheat or feed grains, the landlord, landowner, or operator shall assure that on any other farm in which the landlord, landowner, or operator has an interest as landlord, landowner, or operator that the total acreage of NCA crops on the farm does not exceed the NCA for such farm.

(d) A landowner or landlord is subject to paragraphs (b) and (c) of this section even if the landowner or landlord leases for cash or other consideration all or part of a farm when the lease is executed after the Secretary announces any offsetting compliance requirement.

(e) Any executor, trust officer, or farm manager responsible for the management of a farm shall be considered as the operator of the farm for purposes of paragraphs (b) or (c) of this section if such person receives a percentage of the gross or net farm income exceeding 10 percent of the crops or proceeds thereof for such management service.

(f) For purposes of paragraphs (b) or (c) of this section, all persons or entities in each category listed below shall be considered as the same producer and shall be fully responsible for the action of any person or entity in that category:

(1) Husband and wife, except that the husband and wife may be considered as separate producers if the spouse receiving benefits does not share to any degree in crops or proceeds thereof from the other farm, ownership or managerial control of the other farm is not shared by such spouse, and there have been no changes in the ownership, operation, or managerial control of the other farm which would tend to defeat the purposes of paragraphs (b) or (c) of this section.

(2) Minor children and the parent, guardian, or other person legally responsible for the minor unless the person legally responsible for the minor does not occupy the same household as the minor and shares no interest in the farming operations of the minor.

(3) A partnership and a member of the partnership with over 50 percent interest in the partnership.

(4) A corporation and a stockholder with over 50 percent of the stock of such corporation.

(5) An estate and the sole heir of the estate.

(6) A trust and the sole beneficiary of the trust.

(7) Two or more corporations, estates, trusts, or any combination of such entities which have common stockholders, beneficiaries or heirs who own more than a combined 50 percent interest in each corporation, estate, or trust.

(g) Notwithstanding the foregoing:

(1) Any person who places land in a trust the beneficiary of which is such person's parent, brother, sister, spouse, child or grandchild shall be considered the same producer as the trust for purposes of paragraphs (b) or (c) of this section if such person acts as the trustee or trust officer for the trust or in any other way retains any management responsibility for the land subject to the trust even though such person does not receive any share of the crops or proceeds thereof from such land.

(2) When the State committee, or the county committee with the approval of the State committee, determines that a corporation, partnership, or trust was formed, modified or used for the purpose of circumventing paragraphs (b) or (c) of the section, the corporation and any stockholder of the corporation, the partnership and any member of the partnership, or the trust and any beneficiary of the trust shall be considered as the same producer and shall be fully responsible for the actions of the corporation, partnership, or trust.

(3) A landowner, landlord, or operator may be exempted from complying with paragraphs (b) or (c) of this section with respect to a crop if the county committee determines that a lease which prevents compliance was executed prior to the time that the Secretary announced that offsetting compliance is a requirement of the program for such crop.

(4) A landowner may be exempt from complying with paragraphs (b) or (c) of this section if the landowner has an undivided interest in the farm that does not exceed 50 percent.

(5) A landowner, landlord, or operator may be exempt from complying with paragraphs (b) or (c) of this section for the current year if that person assumed ownership or control of the land after the crop was planted for the current year.

§ 1413.102 Determination of farm program acreage.

(a) *Reporting.* As a condition of eligibility for loans, purchases and payments in accordance with the provisions of this part, the operator must submit a report of acreage in accordance with Part 718 of this chapter that lists all crops and land uses which are subject to the contract for all cropland on the farm for the crop year. Except as otherwise provided in this part, all acreage determinations shall be made in accordance with Part 718 of this chapter.

(b) *Designation to a program crop.* The operator shall designate on the report of acreage filed in accordance with Part 718 of this chapter whether the acreage of approved nonprogram crops and conserving uses on the farm shall be credited to one or more of the crops of wheat, feed grains, upland cotton, and rice. The operator shall also designate the acreage of other nonprogram crops to one or more of the crops of wheat, feed grains, upland cotton, and rice. If the operator fails to so designate such acreages to such crops by the final reporting date established for the farm, the county committee shall allocate the acreage of approved nonprogram crops and conserving uses and the acreage of other nonprogram crops in accordance with instructions issued by the Deputy Administrator.

(c) *Irrigated acreage.* In accordance with instructions issued by the Deputy Administrator, an acreage of approved nonprogram crops and conserving uses may be credited as an irrigated acreage of wheat or feed grains if: (1) Both irrigated and nonirrigated yields have been established for such crop of wheat or feed grains; (2) all or part of the acreage actually planted to wheat or feed grains for harvest is irrigated; and (3) the acreage of approved nonprogram crops and conserving uses is irrigated or considered to be irrigated in the current crop year.

(d) *Limitation.* The sum of the acreage of approved nonprogram crops and conserving uses and the acreage of other nonprogram crops credited to the crop shall not exceed the difference between the acreage base for the crop for the crop year and the sum of:

(1) The acreage of the crop planted for harvest;

(2) The acreage which the county committee determines, in accordance with § 1413.105, the producer was prevented from planting to the crop due to a natural disaster or similar condition beyond the producer's control; and

(3) The acreage which is designated as ACR for the crop.

(e) *Other nonprogram crops.* An acreage of other nonprogram crops, excluding peanuts, soybeans, and extra long staple cotton, shall be credited to a crop of rice, upland cotton, feed grains, or wheat only as follows:

(1) Producers on the farm must be participating in the acreage reduction program for such program crop;

(2) The acreage of the program crop planted for harvest must equal at least 50 percent of the permitted acreage for such crop;

(3) The amount of acreage of other nonprogram crops shall be limited to 20 percent of the permitted acreage of the program crop for the 1990 crop year; and

(4) No acreage of other nonprogram crops shall be credited to a crop of rice, upland cotton, feed grains, or wheat if the farm program acreage for the crop determined in accordance with § 1413.108(b) includes any acreage of approved nonprogram crops or conserving uses.

(f) *Haying and grazing.* Haying and/or grazing of approved nonprogram crops and conserving use acreages credited as the program crop may be permitted only as follows:

(1) *Approved nonprogram crops.* Haying and/or grazing of approved nonprogram crops credited as the program crop shall only be permitted if requested by the State committee and the Secretary approves such request.

(2) *Conserving uses and ACR.* Haying and/or grazing of acreages devoted to conserving uses or ACR and designated to a program crop in accordance with the provisions of § 1413.108 shall be permitted, except for a consecutive 5-month period between April 1 and October 31 as established by the State Committee, unless it has been determined by the Secretary, or a designee of the Secretary, that such haying and/or grazing would have an adverse economic effect.

[51 FR 36905, Oct. 16, 1986, as amended at 53 FR 3859, Feb. 10, 1988. Redesignated at 53 FR 20290, June 3, 1988, and amended at 55 FR 1571, Jan. 17, 1990]

§ 1413.103 General payment provisions.

(a) *Issuance.* The payment of any amount which is due the operator or other producers on a farm shall be made only after the producers are determined to be in full compliance with the contract and applicable regulations.

(b) *Failure to comply fully.* Except as otherwise provided herein and in Part 791 of this chapter, no payment shall be made for a farm or to a producer when there is failure to comply fully with the regulations set forth in this part.

(c) *Payment due producer.* Subject to the provisions of the maximum payment limitation in accordance with § 1413.1 and the payment limitation regulations found at Part 795 of this chapter, the total earned payment due each eligible producer under the program shall be determined by multiplying the total earned payment for the farm by the producer's share of such payment.

(d) *Payment declined or producer ineligibility.* If a producer declines to accept, or is determined to be ineligible for all or any part of the producer's share of the payment computed for the farm in accordance with the provisions of this section, such payment or portions thereof shall not become available for any other producer on the farm.

(e) *Unearned payments and overpayments.* A person shall refund to CCC any amounts representing payments that exceed the payments determined by CCC to have been earned under the program authorized by this part. A late payment charge may be assessed in accordance with the provisions of Part 1403 of this title.

(f) *Combined entities.* Whenever two or more individuals or entities are considered to be one person in accordance with the maximum payment limitation regulations found at Part 795 of this chapter, the controlled substance regulations found at Part 796 of this chapter, or the sodbuster and swampbuster regulations found at Part 12 of this title:

(1) Any payment issued to one such individual or entity in accordance with this part shall be considered a payment to all such individuals and entities; and

(2) Each individual or entity shall be jointly and severally liable for refunding the amounts of any unearned payments or overpayments in accordance with paragraph (e) of this section and for paying any liquidated damages applicable under the contract.

(g) *Making payments.* When diversion or deficiency payments computed for two or more crops on a farm result in a determination that a payment is due to a producer for one crop but a refund of an unearned payment is due from the producer under the program for another crop, CCC shall, without regard to the regulations on setoffs and withholdings found at Part 13 of this title:

(1) Deduct the amount of the refund from the amount of the payment due;

(2) Pay the producer the remaining amount of the payment due, if any; and

(3) Provide the producer with an explanation of the payment computations and the basis for the reductions.

§ 1413.104 Advance payments.

(a) *General.* In order to receive an advance deficiency or diversion payment authorized for a crop:

(1) The operator and other producers on a farm must:

(i) Enter into a contract with CCC to participate in the acreage limitation, set-aside, and land diversion program, if applicable;

(ii) Request the advance payment; and

(2) The farm must not have been determined to be out of compliance with any of the requirements of the contract or the program at the time of payment.

(b) *Advance deficiency payments.* Advance deficiency payments will be made for crops as announced by the Secretary. The announcement will specify the rates, manner, and time of payment.

(c) *Advance diversion payments.* Advance diversion payments will be made for crops as announced by the Secretary. The announcement will specify the rates, manner, and time of payment.

(d) *Refunds.* (1) The provisions of § 1413.103(e) are applicable to the amounts of any advance diversion or deficiency payments which are not earned by the producer. However, no late payment charge shall be assessed with respect to producers who have otherwise complied with the requirements of the program for the crop but have failed to refund to CCC the amount of the advance deficiency payments before the end of the marketing year for the crop when the final deficiency payment rate determined under § 1413.108(a) is zero or is less than the advance deficiency payment rate.

(2) In addition to the provisions of § 1413.103(e), interest as determined in accordance with part 1403 of this title, shall be charged on the amount of the advance payment if a producer obtains an advance deficiency or land diversion payment, or both, for a crop on a farm but does not comply with the requirements for any acreage limitation, set-aside, or land diversion program required for the crop on the farm for the year. Interest at the rate determined in accordance with part 1405 of this title shall be computed from the date of issuance of the payment to the earlier of:

(i) The date of the repayment; or

(ii) The date of delinquency, as determined in accordance with part 1403 of this title.

[51 FR 36905, Oct. 16, 1986. Redesignated at **53 FR 20290, June 3, 1988, and amended at 55 FR 1571, Jan. 17, 1990**]

§ 1413.105 Disaster credit.

(a) In order to obtain failed acreage or prevented planting credit, the operator must file an application for disaster credit on a form prescribed by the Deputy Administrator. Such application shall be filed with the county committee by a date prescribed by the Deputy Administrator.

(b) In cases of prevented planting, the county committee shall approve prevented planting credit for the acreage which the committee determines that the producer intended to plant to the crop and a natural disaster or other condition beyond the producer's control prevented the planting of the crop.

(c) In cases of failed acreage, the county committee shall approve failed acreage credit for the acreage which the committee determines was planted to the crop with the reasonable expectation of producing a crop and was damaged or destroyed by a natural disaster or other condition beyond the producer's control such that harvesting the crop is not feasible or economical.

(d) When prevented planting or failed acreage credit for a crop is approved for an acreage:

(1) And producers on the farm are participating in the production adjustment program for such crop, such credit shall be limited to the permitted acreage for such crop.

(2) Except for established practices of doublecropping as prescribed by the Deputy Administrator, any later crop planted on such acreage shall not be considered to be planted for any purpose under the programs authorized by this part and Parts 1421 and 1427 of this title regardless of the permitted acreage for such crop.

§ 1413.106 Established (target) prices.

The established prices for each crop of a commodity will be announced by the Secretary.

§ 1413.107 National program acreage.

Whenever an acreage reduction requirement is not in effect for a crop, a national program acreage shall be established and announced by the Secretary. The national program acreage shall equal the number of harvested acres the Secretary estimates will produce the quantity (less imports) that will be used domestically and for export during the marketing year for such crop. The national program acreage which is established for any crop may later be revised if the Secretary determines that an adjustment is necessary, based upon the latest information available, for the purpose of determining an allocation factor for use as provided for in § 1413.108.

§ 1413.108 Deficiency payments.

(a) *Basis for payment rate.* Except as provided in paragraphs (a)(2) and (4) of this section:

(1) The deficiency payment rate shall be the amount by which the established (target) price exceeds the higher of:

(i) The national average loan rate established for the crop; or

(ii) The national weighted average market price received by producers for the crop during:

(A) The first 5 months of the marketing year for wheat, feed grains, and rice;

(B) The calendar year that includes the first 5 months of the marketing year for upland cotton; and

(C) The first 8 months of the marketing year for ELS cotton.

(2) For each of the 1986 through 1988 crops of wheat and feed grains, the Secretary may announce that, if the national weighted average market price received by producers for the crop during the first 5 months of the marketing year exceeds the amount specified in paragraph (a)(3) of this section, the deficiency payment rate for such crop shall be the amount by which the established "target" price for such crop exceeds the higher of the amount specified in paragraph (a)(3) of this section and the loan rate determined for such crop before any adjustment made by the Secretary to maintain a competitive market position.

(3) [Reserved]

(4) For wheat and feed grains, whenever the Secretary announces a reduction in the loan and purchase level for a crop in order to maintain a competitive market position for such crop, the deficiency payment rate shall be increased by such amount as is determined necessary to provide the same total return to producers as if the loan

and purchase level had not been reduced, taking into consideration payments made in accordance with paragraph (a)(2) of this section. In such case, the amount of the deficiency payment rate shall be the smaller of:

(i) The difference between the national average loan rate for the crop before the reduction by the Secretary and the national weighted average market price received by producers during the entire marketing year, or

(ii) The difference between the national average loan rate before reduction and the national average loan rate after reduction by the Secretary.

(b) *Farm program acreage.* (1) If no acreage reduction requirement is in effect for a crop, the farm program acreage shall be the acreage of the crop planted for harvest for the current year multiplied by an allocation factor. The allocation factor shall be determined by dividing the national program acreage for the crop, as specified in § 1413.107, by the estimated national current year acreage for harvest of the crop. However:

(i) The allocation factor shall not be less than 80 percent for each of the crops of barley, corn, grain sorghum, oats, rice, and wheat nor more than 100 percent for such crops and upland and ELS cotton;

(ii) The farm program acreage shall not be reduced by the allocation factor if the current year acreage of the crop on the farm is reduced voluntarily from the acreage base for the crop by a percentage announced by the Secretary; and

(iii) The allocation factor shall be adjusted in accordance with instructions issued by the Deputy Administrator to provide equity for a farm for which the reduction in the current year's acreage is insufficient to exempt the farm from the application of the allocation factor.

(2) If an acreage reduction program or required land diversion program is in effect for the crop, the farm program acreage shall be the acreage of the crop planted for harvest for the current year, not to exceed the permitted acreage. However, for wheat, feed grains, upland cotton, and rice, if an acreage reduction program is in effect and the acreage of the crop planted for harvest is less than 92 percent of the permitted acreage for the crop, the farm program acreage may be increased, but not to exceed 92 percent of the permitted acreage of the crop, as follows:

(i) If: (A) For upland cotton or rice, the acreage of the crop planted for harvest is less than 50 percent of the permitted acreage of the crop for the farm, or; (B) for wheat or feed grains, the farm is not subject to the provisions of § 1413.50(a)(2), the farm program acreage shall not be increased above the actual planted acreage for 1988 and subsequent year's crops;

(ii) If: (A) For upland cotton or rice, the acreage of the crop planted for harvest equals or exceeds 50 percent of the permitted acreage, or; (B) for wheat or feed grains, the farm is subject to the provisions of § 1413.50(a)(2), the farm program acreage shall be the sum of the following:

(iii) If a State or local agency has imposed in an area of the State or county a quarantine on the planting for harvest of any crop for which price support is available, the Deputy Administrator, based upon a recommendation of the State committee, may allow the acreage subject to the quarantine to be considered as eligible for purposes of program payments as follows:

(A) Acreage subject to the quarantine may be credited to a crop in accordance with § 1413.102, and

(B) The farm program acreage on a farm where such acreage is credited to the crop shall be the sum of the acreage of the crop planted for harvest and the sum of the acreages of approved nonprogram crops and conserving uses credited to a crop in accordance with § 1413.102 which is in excess of 8 percent of the permitted acreage for such crop.

(c) *Payment computation.* Deficiency payments shall be determined for:

(1) The 1986 crop year, for each crop by multiplying the farm program acreage by the higher of the farm program payment yield as provided for in § 1413.6 or 97 percent of the 1985 farm program payment yield by the deficiency payment rate. However, no deficiency payment shall be made for any quantity of a crop with respect to

which a reduced yield payment is made.

(2) The 1987 crop year, for each crop by multiplying the farm program acreage by the higher of the farm program payment yield as provided for in § 1413.6 or 95 percent of the 1985 farm program payment yield by the deficiency payment rate. However, no deficiency payment shall be made for any quantity of a crop with respect to which a reduced yield payment is made.

(3) The 1988 through 1990 crop years for each crop by multiplying the farm program acreage by the farm program payment yield as provided for in § 1413.6 by the deficiency payment rate. However, no deficiency payment shall be made for any quantity of a crop with respect to which a reduced yield payment is made.

(d) *Date of payment.* Deficiency payments will be made to producers as soon as practicable after the following dates:

(1) *Barley, oats and wheat.* December 1 of the current year.

(2) *Upland cotton and rice.* February 1 following the current year.

(3) *Corn and grain sorghum.* March 1 following the current year.

(4) *ELS cotton.* May 15 following the current year.

(5) *Increased payments.* If applicable, the increased payments for feed grains and wheat prescribed in paragraph (a)(4) of this section shall be made as soon as practicable after the following dates:

(i) *Wheat.* (A) December 1, but not later than December 15, with respect to 75 percent of such payment if the producer requested at the time of program enrollment that such an advance be made. (B) July 1, with respect to any remaining payment if such an advance payment has been made or if the producer has not requested such an advance payment.

(ii) *Barley and oats.* July 1.

(iii) *Corn and grain sorghum.* October 1.

(e) *Additional yield payments.* If, with respect to each of the 1988 through 1990 crops of wheat, feed grains, upland cotton, or rice, 90 percent of the 1985 farm program payment yield exceeds the farm program payment yield for the farm established in accordance with § 1413.6, deficiency payments for such crops for each year shall be determined by multiplying the farm program acreage by 90 percent of the 1985 farm program payment yield by the deficiency payment rate.

[51 FR 36905, Oct. 16, 1986, as amended at 53 FR 3859, Feb. 10, 1988. Redesignated at 53 FR 20290, June 3, 1988, and amended at 55 FR 1571, Jan. 17, 1990]

§ 1413.109 Division of payments.

(a) *General.* Each producer on a farm shall be given the opportunity to participate in the program for a crop in proportion to such producer's interest in the program crop on the farm or the interest such producer would have had if the crop had been produced. The name of all such producers shall be listed on the contract. Federal agencies can earn no program payments, but any shares to which such agencies would otherwise be entitled shall also be shown on the contract as though the agencies were earning them. The sum of the percentage shares of the program payment shall equal 100 percent.

(b) *Division of program payment.* Each producer's share of the farm program payment for a crop shall be based on the following:

(1) *Cash lease.* If a rental agreement contains provisions for a guaranteed minimum rental with respect to the amount of rent to be paid to the landlord by a tenant, such agreement shall be considered to be a cash rental agreement. In addition, the rental agreement must be customary and reasonable for the area.

(2) *Share lease.* If a rental agreement contains provisions that require the payment of rent on the basis of the amount of the crop produced, or the proceeds derived from the crop, or the interest such producer would have had if the crop had been produced, such agreement shall be considered to be a share rental agreement. In addition, the rental agreement must be customary and reasonable for the area.

(3) *Adjustment by County Committee.* A different division of payment which is fair and equitable may be approved by the county committee if all

of the producers who would otherwise share in the payment agree to the different division in writing. Such different division of payments may be also be approved by the county committee, with the concurrence of a representative of the State committee, even though all of the producers do not agree with respect to the division of payment. In addition, a different division of payments may be approved by the county committee when required by § 1413.151.

[53 FR 3859, Feb. 10, 1988. Redesignated at 53 FR 20290, June 3, 1988]

§ 1413.110 Eligibility of hybrid seed producers.

(a) A person who grows hybrid seed pursuant to a contract with a hybrid seed company may be considered to be a producer only if such person:

(1) Retains control over all cropping and cultural practice decisions;

(2) Does not receive a guaranteed payment for producing the hybrid seed;

(3) Provides a copy of the hybrid seed contract to the county committee; and

(4) All other provisions of § 1413.3(a) are met.

[55 FR 1571, Jan. 17, 1990]

§§ 1413.111—1413.129 [Reserved]

§ 1413.130 Eligibility for regular prevented planting and reduced yield payments.

(a) Prevented planting payments are authorized to be made to producers of wheat, feed grain, upland cotton, and rice only if such producers comply with the requirements of this part and if prevented planting crop insurance offered in accordance with the Federal Crop Insurance Act is not available with respect to the producer's acreage of such commodity.

(b) Reduced yield payments are authorized to be made to producers of wheat, feed grain, upland cotton, and rice only if such producers comply with the requirements of this part and reduced yield crop insurance offered in accordance with the Federal Crop Insurance Act is not available with respect to the producer's acreage of such commodity.

(c) Prevented planting payments and reduced yield disaster payments are authorized to be made to producers of wheat, feed grains, upland cotton and rice only if:

(1) Such a producer has entered into a contract with CCC for the applicable crop of the commodity on a farm;

(2) The operator and all producers have been determined to be in compliance with such contract; and

(3) The operator of the farm submits a Form ASCS-574, Application for Disaster Credit, in accordance with instructions issued by the Deputy Administrator, and also submits a report of production and disposition in accordance with § 1413.6(d).

(d) In addition to the requirements of paragraph (c) of this section, the county committee must also determine that the operator and other producers were prevented from planting an eligible commodity or that the production of an eligible commodity on an acreage resulted in a reduced yield of such commodity because of a drought, flood, other natural disaster or other condition beyond the control of the operator or other producer.

(e) Regular disaster payments shall be computed in accordance with § 1413.131.

§ 1413.131 Regular disaster payment computations.

(a) *Prevented planting*—(1) *Payment rate.* The payment rate is one-third of the established (target) price as provided for in § 1413.106.

(2) *Acreage eligible for payment.* The acreage eligible for payment equals the smallest of the following:

(i) The acreage of the crop intended for harvest, but which could not be planted to the crop or other nonconserving crops because of a drought, flood or other natural disaster of other condition beyond the producer's control;

(ii) The result obtained by subtracting the acreage of the crop planted in the current year from the acreage of the crop that was planted or prevented from being planted in the previous year;

(iii) For crops for which an acreage reduction or set-aside requirement is in effect or on farms participating in a land diversion or wheat grazing and hay program, the amount by which the permitted acreage of the crop for the current year exceeds the acreage of the crop planted in the current year; or

(iv) The acreage for which crop insurance under the Federal Crop Insurance Act is not available.

(3) *Payment computation.* Prevented planting payments for each crop shall be the result of multiplying the acreage eligible for payment times 75 percent of the farm program payment yield as provided in § 1413.6 times the prevented planting payment rate.

(b) *Reduced yield*—(1) *Payment rate.* The reduced yield payment rate is one-third of the established (target) price for upland cotton and rice and one-half of the established (target) price for barley, corn, grain sorghum, oats, and wheat as provided in § 1413.106.

(2) *Payment computation.* Reduced yield payments shall be determined for each crop by multiplying the reduced yield payment rate times the smaller of the following computations:

(i) The result determined by multiplying the acreage of the crop on the farm by 60 percent (75 percent for upland cotton and rice) of the farm program payment yield as provided in § 1413.6, and subtracting the determined production for the farm therefrom; or

(ii) The result determined by multiplying the acreage of the crop on the farm for which crop insurance under the Federal Crop Insurance Act was not available by 60 percent (75 percent for upland cotton and rice) of the farm program payment yield as provided in § 1413.6, and subtracting the determined production for the eligible acreage therefrom.

(3) *Determining production.* The production from any acreage shall be determined as follows:

(i) The production from acreage which is not harvested shall be appraised in accordance with instructions issued by the Deputy Administrator and shall be added to the actual production for the purpose of determining eligibility for and the amount of reduced yield disaster payments; and

(ii) The farm program payment yield shall be used with respect to any acreage for which the production cannot be determined. However, if the county committee determines that the acreage was affected by a natural disaster, the farm program payment yield with respect to such acreage shall be the larger of 60 percent (75 percent for upland cotton and rice) of the farm program payment yield as provided in § 1413.6 or the actual average yield from the harvested acreage of the crop.

§§ 1413.132—1413.149 [Reserved]

§ 1413.150 Provisions relating to tenants and sharecroppers.

(a) Program payments shall not be approved for the current year if it is determined that any of the conditions specified below exist:

(1) The landlord or operator has not given the tenants and sharecroppers on the farm an opportunity to participate in the program;

(2) The number of tenants and sharecroppers on the farm is reduced by the landlord or operator below the number on the farm in the year before the current year in anticipation of or because of participating in the program, except that this provision shall not apply to the following:

(i) A tenant or sharecropper who leaves the farm voluntarily or for some reason other than being forced off the farm by the landlord or operator in anticipation of or because of participating; or

(ii) A cash tenant, standing-rent tenant, or fixed-rent tenant unless: (A) Such tenant was living on the farm in the year immediately preceding the current year, or (B) at least 50 percent of such tenant's income was received from farming in the immediately preceding year;

(3) There exists between the operator or landlord and any tenant or sharecropper, any lease, contract, agreement, or understanding unfairly exacted or required by the operator or landlord which was entered into in anticipation of participating in the program the effect of which is:

(i) To cause the tenant or sharecropper to pay to the landlord or operator any payments earned by the person under the program,

(ii) To change the status of any tenant or sharecropper so as to deprive the person of any payments or other right which such person would otherwise have had under the program,

(iii) To reduce the size of the tenant's or sharecropper's producer unit, or

(iv) To increase the rent to be paid by the tenant or decrease the share of the crop or its proceeds to be received by the sharecropper;

(4) The landlord or operator has adopted any other scheme or device for the purpose of depriving any tenant or sharecropper of the payments to which such person would otherwise be entitled under the program. If any of such conditions occur or are discovered after payments have been made, all or any such part of the payments as the State committee may determine shall be refunded to CCC.

(b) Notwithstanding any other provision of this section, landlords or operators who in the past had tenants or sharecroppers on their land for purposes of producing the program crop and such individuals are not classified as employees subject to the minimum wage provisions under the Fair Labor Standards Act, may pay these individuals on a wage basis and will not be considered as reducing the number of tenants or sharecroppers.

§ 1413.151 Successors-in-interest.

(a) In the case of death, incompetency, or disappearance of any producer whose name appears on the contract, the payment due such producer shall be made to such producer's successor, as determined in accordance with the regulations found at Part 707 of this chapter.

(b) When any person who had an interest as producer of the crop or would have had an interest in the crop as a producer if the crop had been planted (the "predecessor") is succeeded on the farm by another producer (the "successor") after a contract has been executed, any payment which is due and owing shall be divided between the predecessor and successor on such basis as the predecessor, successor, and the county committee agree is fair and equitable, the contract shall be revised accordingly, and the successor shall sign the revised contract. If the predecessor and successor fail to agree on a revised contract and the predecessor has become unable to carry out the producer's responsibilities under the contract, CCC may terminate the contract with respect to the predecessor and enter into a new contract with the successor.

(c) In any case in which the amount of any payment due any successor producer has been paid previously to another producer, such payment shall not be paid to the successor unless it is recovered from the producer to whom it has been paid or payment to the successor is authorized by the Deputy Administrator.

§ 1413.152 Misrepresentation and scheme or device.

(a) A producer who is determined by the county committee or the State committee to have erroneously represented any fact affecting a program determination shall not be entitled to payments under the crop program with respect to which the representation was made and shall refund to CCC all payments received by such producer with respect to such farm and such crop program and shall be liable for liquidated damages in accordance with the contract.

(b) A producer who is determined by the State committee, or the county committee with the approval of the State committee, to have knowingly: (1) adopted any scheme or device which tends to defeat the purpose of the program, (2) made any fraudulent representation, or (3) misrepresented any fact affecting a program determination shall refund to CCC all payments received by such producer with respect to all farms and shall be liable for liquidated damages in accordance with the contract.

§ 1413.153 Setoffs and assignments.

(a) *Producer indebtedness and claims.* Except as provided in paragraph (b) of this section, any payment or portion thereof due any person shall be allowed without regard to questions of title under State law, and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing setoffs and withholdings found at Part 13 of this title shall be applicable to such payments.

(b) *Assignments.* Any producer entitled to any payment may assign any such payments which are made in cash in accordance with regulations governing assignment of payment found at Part 709 of this chapter.

§ 1413.154 Payments by commodities and commodity certificates and refunds.

(a) Payments under the programs authorized by this part may be made in the form of commodities or commodity certificates in accordance with Part 770 of this chapter.

(b) Whenever it is determined in accordance with § 1413.103 that a producer was overpaid or received payments that were not earned, and such payments were in the form of commodities or commodity certificates, the producer shall refund the amount of the overpayment either by returning commodity certificates in an amount equal to the overpayment or by making cash payments to CCC.

§ 1413.155 Appeals.

(a) A producer, an assignee of a cash payment, or a holder of a commodity certificate issued in accordance with § 1413.154 may obtain reconsideration and review of any determination made under this part in accordance with the appeal regulations found at Part 780 of this chapter.

(b) With respect to farm program payment yields, determinations made before December 23, 1985 are not appealable.

[51 FR 39483, Oct. 28, 1986; 52 FR 10727, Apr. 3, 1987. Redesignated at 53 FR 20290, June 3, 1988]

§ 1413.156 Performance based upon advice or action of county or State Committee.

The provisions of Part 791 of this chapter with respect to performance based upon action or advice of any authorized representative of the Secretary shall be applicable to this part.

§ 1413.157 Paperwork Reduction Act assigned numbers.

The information collection requirements contained in these regulations (7 CFR Part 1413) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control numbers 0560-0092, 0560-0650, 0560-0091, 0560-0030, and 0560-0071.

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

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Authority: 7 U.S.C. 1421, 1423, 1425, 1441, 1444-1, 1444b, 1445-2, 1445c-2, 1445e, 1446, and 1447; 15 U.S.C. 714b and 714c, unless otherwise noted.

Subpart—Price Support Regulations for the 1988 and Subsequent Crops of Wheat, Feed Grains, Rice, Soybeans, and Farm-Stored Peanuts

Source: 44 FR 2354, Jan. 11, 1979, unless otherwise noted.

§ 1421.1 Applicability.

(a) The regulations of this subpart are applicable to the 1988 and subsequent crops of barley, corn, oats, peanuts, rice, rye, sorghum, soybeans, and wheat. These regulations set forth the terms and conditions under which price support loans and purchase agreements shall be entered into by the Commodity Credit Corporation ("CCC"). Additional terms and conditions are set forth in the note and security agreement and the purchase agreement which must be executed by a producer in order to receive price support. With respect to warehouse-stored loans for peanuts, such loans shall be made in accordance with Part 1446 of this chapter.

(b) Basic county price support rates, the schedule of premiums and discounts, and forms which are used in administering the price support program for a crop of a commodity are available in State and county Agricultural Stabilization and Conservation Service ("ASCS") offices ("State and county offices", respectively).

(c) Price support loans and purchase agreements shall be available only with respect to rice produced in the continental United States. Farm-stored price support loans and purchase agreements shall be available only with respect to farmer stock peanuts, as defined in Part 1446 of this chapter, which are produced in the United States which are of a type specified in Part 729 of this title. Price support loans and purchase agreements shall be available with respect to all other eligible commodities produced in the United States. Price support loans and purchase agreements shall not be available with respect to any commodity produced on land owned or otherwise in the possession of the United States if such land is occupied without the consent of the United States.

[53 FR 20282, June 3, 1988, as amended at 53 FR 47659, Nov. 25, 1988]

§ 1421.2 Administration.

(a) The price support program which is applicable to a crop of a commodity shall be administered under the general supervision of the Administrator, ASCS, and shall be carried out in the field by State and county Agricultural Stabilization and Conservation committees ("State and county committees", respectively).

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this part.

(c) The State committee shall take any action required by these regulations which has not been taken by the county committee. The State committee shall also: (1) Correct, or require a county committee to correct, an action taken by such county committee which is not in accordance with the regulations of this part; or (2) require a county committee to withhold taking any action which is not in accordance with the regulations of this part.

(d) No provision or delegation herein to a State or county committee shall preclude the Administrator, ASCS, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator, State and County Operations, ASCS, may authorize State and county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not affect adversely the operation of the price support program.

(f) A representative of CCC may execute price support loans and purchase agreements and related documents only under the terms and conditions determined and announced by CCC. Any such document which is not executed in accordance with such terms and conditions, including any purported execution prior to the date authorized by CCC, shall be null and void.

[53 FR 20282, June 3, 1988, and 53 FR 47659, Nov. 25, 1988]

§ 1421.3 Definitions.

(a) *Applicability.* The definitions set forth in this section shall be applicable for all purposes of program administration. The terms defined in Parts 719 and 1413 of this title shall also be applicable.

(b) "Basic support rate" means the price support rate established by CCC for a commodity before any adjustment for premiums and discounts.

(c) [Reserved]

[53 FR 20282, June 3, 1988, as amended at 55 FR 7691, Mar. 5, 1990]

§ 1421.4 Eligible producers.

(a) *Producer.* An eligible producer of a crop of commodity shall be an individual, partnership, association, corporation, estate, trust, State or political subdivision or agency thereof, or other legal entity which:

(1) Produces such a crop as a landowner, landlord, tenant, or sharecropper, or in the case of rice, furnishes land, labor, water, or equipment for a share of the rice crop;

(2) Meets the requirements of this Part; and

(3) Meets the requirements of Parts 12, 718, and 1413 of this title.

(b) *Estates and trusts.* A receiver or trustee of an insolvent or bankrupt debtor's estate, an executor or an administrator of a deceased person's estate, a guardian of an estate of a ward or an incompetent person, and trustees of a trust estate shall be considered to represent the insolvent or bankrupt debtor, the deceased person, the ward or incompetent, and the beneficiaries of a trust, respectively, and the production of the receiver, executor, administrator, guardian, or trustee shall be considered to be the production of the person or estate represented by the executor or administrator. Loan or purchase documents executed by any such person will be accepted by CCC only if they are legally valid and such person has the authority to sign the applicable documents.

(c) *Eligibility of minors.* A minor who is otherwise an eligible producer shall be eligible for price support only if the minor meets one of the following requirements:

(1) The right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and the applicable price support documents are signed by the guardian;

(3) Any note signed by the minor is cosigned by a financially responsible person; or

(4) A bond is furnished under which a surety guarantees to protect CCC from any loss incurred for which the minor would be liable had the minor been an adult.

(d) *Joint loans.* (1) Two or more producers may obtain a single joint loan with respect to commodities which are stored in the same farm storage facility. Two or more producers may also obtain individual loans with respect to their share of the commodity which is stored commingled in a farm storage facility with commodities owned by other producers if such other producers execute Form CCC-665 which provides that such producers shall obtain the permission of a representative of the county committee prior to removal of any quantity of the commodity from the storage facility. All producers who store a commodity in a farm storage facility in which commodities which have been pledged as collateral for a loan shall be liable for any damage incurred by CCC with respect to the deterioration or unauthorized removal or disposition of such commodities.

(2) Two or more producers may obtain a single joint loan with respect to commodities which are stored in an approved warehouse if the warehouse receipt which is pledged as collateral for the loan is issued jointly to such producers.

(3) If more than one producer executes a note and security agreement with CCC, each such producer shall be jointly and severally liable for the violation of the terms and conditions of the note and the regulations set forth in this part. Each such producer shall also remain liable for repayment of the entire loan amount until the loan is fully repaid without regard to such producer's claimed share in the commodity pledged as collateral for the loan. In addition, such producer may not amend the note and security agreement with respect to the producer's claimed share in such commodities, or loan proceeds, after execution of the note and security agreement by CCC.

(e) *Denial of farm-stored loans.* If the county committee determines that a producer has:

(1) Been convicted of a criminal act, or has made a misrepresentation, with respect to:

(i) Acquiring a farm-stored loan or

(ii) In the maintenance of the commodity pledged as security for a farm-stored loan; or

(2) Failed to protect adequately the interests of CCC in the commodity pledged as security for a farm-stored loan, the producer shall be ineligible for subsequent farm-stored loans unless the county committee determines that the producer will adequately protect CCC's interest in the commodity which would be pledged as collateral for such a loan. A producer who is denied a farm-stored loan will be eligible to pledge a commodity as collateral for a warehouse-stored loan.

(f) *Warehouse storage loans to warehousemen.* Warehouse storage loans may be made to a warehouseman who, in the capacity of a producer, tenders to CCC warehouse receipts issued by such warehouseman on a commodity produced by such warehouseman only in those States where the issuance and pledge of such warehouse receipts is valid under State law.

(g) *Approved cooperative.* A cooperative marketing association which has been approved in accordance with Part 1425 of this chapter may obtain price support on behalf of the members of the cooperative who are eligible to receive price support with respect to a crop of a commodity. For purposes of this subpart, the term "producer" includes an approved cooperative marketing association.

(h) *Peanut producer.* With respect to peanuts tendered to CCC for price support, a producer must also meet the provisions of 7 CFR 1446.63. Prior to obtaining a farm-stored loan with respect to additional peanuts, a producer must register as a handler in accordance with Part 729 of this title.

(i) *Restrictions in the use of agents.* A producer shall not delegate to any person (or any agent or representative of such person), except to a farm manager, who has an interest in storing, processing, or merchandising any commodity which is eligible to receive price support in accordance with this subpart the authority to exercise on behalf of the producer any of the producer's rights which arise in accordance with this subpart.

[44 FR 2354, Jan. 11, 1979; 44 FR 6351, Feb. 1, 1979, as amended at 51 FR 8455, Mar. 11, 1986; 51 FR 36905, 36930, Oct. 16, 1986; 53 FR 6132, Mar. 1, 1988. Redesignated and **amended at 53 FR 20282, June 3, 1988; 53 FR 47659, Nov. 25, 1988]**

§ 1421.5 General eligibility requirements.

(a) *Application for price support.* A producer must, unless otherwise authorized by CCC, request price support at the county office which, in accordance with Part 719 of this title, is responsible for administering programs for the farm on which the commodity was produced. An approved cooperative marketing association must, unless otherwise authorized by CCC, request price support at a servicing agent bank approved by CCC or at the county office for the county in which the principal office of the cooperative is located. All note and security agreements, purchase agreements and related documents necessary for the administration of price support programs shall be determined by CCC and are available at State and county offices. In order to receive price support for a crop of a commodity, a producer must execute a note and security agreement or purchase agreement on or before:

(1) January 31 of the year following the year in which the crop of peanuts is normally harvested for additional peanuts pledged as collateral for a farm-stored loan;

(2) March 31 of the year following the year in which the following crops are normally harvested: Quota peanuts pledged as collateral for a farm-stored loan; barley; oats; rye; and wheat;

(3) April 30 of the year following the year in which the crop of peanuts is harvested for quota peanuts tendered for purchase; and

(4) May 31 of the year following the year in which the following crops are normally harvested: Corn, sorghum; rice; and soybeans.

(b) *Quality and quantity.* (1) Commodities must be tendered to CCC by an eligible producer andmust be in existence at the time of disbursement of loan or purchase agreement proceeds. Such commodities must also be merchantable for food, feed, or other uses determined by CCC and must not contain mercurial compounds, toxin producing molds, or other substances poisonous to humans or animals. Such commodities must not contain more than two rodent pellets or comparable amounts of other filth per 1,000 grams of wheat.

(2) With respect to barley, corn, oats, sorghum, soybeans, rice, rye, and wheat, the determination of class, grade, grading factors, milling yields, and other quality factors shall be based upon the Official Grain Standards of the United States and the Official Rice Standards of the United States as applied to rough rice whether or not such determinations are made on the basis of an official inspection. The costs of an official grade determination shall not be paid by CCC. With respect to peanuts, the determination of type, quality, and quantity shall be determined at the time of delivery to CCC by a Federal-State Inspector authorized or licensed by the Secretary.

(3) Corn pledged as collateral for a farm-stored loan may be ear or shelled corn. If the collateral is ear corn, the producer must: (i) Before delivery to CCC, shell such corn without cost to CCC; and (ii) before shelling, have the approval of CCC. Corn pledged as collateral for a warehouse-stored loan or tendered in accordance with a purchase agreement must be shelled corn.

(4) When a quantity of a commodity is determined by weight, the following shall apply:

(i) A bushel of barley shall be 48 pounds of barley free of dockage;

(ii) A bushel of corn shall be 56 pounds of corn free of dockage;

(iii) A bushel of oats shall be 32 pounds of oats;

(iv) Quantities of peanuts shall be in tons and tenths of a ton;

(v) Quantities of farm-stored rice shall be in whole units of 100 pounds of rice;

(vi) A bushel of rye shall be 56 pounds of rye free of dockage;

(vii) A bushel of soybeans shall be 60 pounds of soybeans that contain no more than one percent foreign material.

(viii) A bushel of sorghum shall be 56 pounds of sorghum free of dockage; and

(ix) A bushel of wheat shall be 60 pounds of wheat free of dockage.

(5) With respect to farm-stored loans and purchase agreements, all determinations of weight and quality, except as otherwise agreed to by CCC, shall be determined at the time of delivery of the commodity to CCC.

(c) *Beneficial interest.* (1) To be eligible to receive price support, a producer must have the beneficial interest in the commodity which is tendered to CCC. The producer must always have had the beneficial interest in the commodity unless, before the commodity was harvested, the producer and a former producer whom the producer tendering the commodity to CCC has succeeded had such an interest in the commodity. Heirs who succeed to the beneficial interest of a deceased producer or who assume the decedent's obligations under an existing loan or purchase agreement shall be eligible to receive price support whether succession to the commodity occurs before or after harvest so long as the heir otherwise complies with the provisions of this Part. Such succeeding producer must assume a substantial interest in and responsibility for production of the commodity. Mere purchase or inheritance of a crop prior to harvest without the acquisition of any additional interest in the farm on which the crop is produced shall not constitute succession of a beneficial interest.

(2) A producer shall not be considered to have divested the beneficial interest in the commodity if the producer enters into a contract to sell or gives an option to buy the commodity if, under the contract or option the producer retains control, risk of loss and title to the commodity subject to such agreement and retains control of the production of the commodity. Commodities obtained by purchase shall not be eligible to be tendered to CCC for price support.

(3) Notwithstanding the provisions of paragraphs (c) (1) and (2) of this section, a producer may pledge as collateral for a loan commodities in which the producer does not have a beneficial interest if CCC determines that the producer has a quantity of a commodity which is eligible to receive price support and that the commodities tendered to CCC will receive price support in an amount not to exceed the amount which would have been provided with respect to the eligible commodities. If CCC approves such a request for price support, the producer shall not otherwise receive price support with respect to the eligible commodity, except as may be determined and announced by CCC. Any such request must be made in the manner prescribed by CCC and must be made at the county office which is authorized to make a price support loan to the producer.

(4) If price support is made available to producers through an approved marketing cooperative in accordance with Part 1425 of this chapter, the beneficial interest in the commodity must always have been in the producer-member who delivered the commodity to the cooperative except as otherwise provided in this subsection. Commodities delivered to such a cooperative shall not be eligible to receive price support if the producer-member who delivered the commodity does not retain the right to share in the proceeds from the marketing of the commodity as provided in Part 1425 of this chapter.

(d) *Redeemed loan collateral.* Except with respect to commodities which have been acquired in accordance with Part 1470 of this chapter and with respect to commodities which have been redeemed at a rate which is less than the original price support level, a producer may, before the final date for obtaining a price support loan for a commodity, reoffer as collateral for such a loan any commodity that had been previously pledged as collateral for a price support loan. The subsequent loan shall have the same maturity date as the original loan.

[53 FR 20283, June 3, 1988, as amended at 53 FR 47659, Nov. 25, 1988]

§ 1421.6 Maturity and expiration dates.

(a) *Loans.* (1) All loans shall mature on demand by CCC and with respect to:

(i) All commodities except peanuts, no later than the last day of the ninth calendar month following the month in which the loan application is made; and

(ii) Peanuts, April 30 of the year following the year the commodity is normally harvested.

(2) CCC may at any time accelerate the loan maturity date by providing the producer notice of such acceleration at least 10 days in advance of the accelerated maturity date.

(b) *Purchase agreements.* (1) With respect to all commodities except peanuts, purchase agreements expire on the last day of the ninth calendar month following the month in which the purchase agreement is approved. With respect to peanuts, purchase agreements expire on April 30 of the year following the year the commodity is normally harvested.

(2) CCC may at any time accelerate the expiration date by providing the producer notice of such acceleration at least 10 days in advance of the accelerated expiration date.

(c) *Extension of loans.* (1) Notwithstanding any other provision of this Part, all 1987 and prior crop year loans which have been made available to eligible producers in accordance with provisions of this part shall not be extended upon maturity except that 1985 and 1986 crop corn and sorghum loans which mature on March 31, 1988 through and including December 31, 1988 may be extended for one year.

(2) With respect to all commodities, 1988 and subsequent year loans may not be extended upon maturity.

[53 FR 47659, Nov. 25, 1988]

§ 1421.7 Adjustment of basic support rates.

(a) *General.* Basic support rates may be established on a State, regional, or county basis and shall be adjusted in accordance with the schedule of premiums and discounts which is applicable to the commodity and as otherwise provided in this section.

(b) *Weed control laws.* If CCC determines that State, district, or county weed control laws affect the value of a commodity, the basic support rate shall be reduced to reflect the reduction in value of the commodity unless the producer or storing warehouseman furnishes a certification from the appropriate weed control official that the commodity complies with weed control laws. The storing warehouseman must also agree to hold CCC harmless for any loss or penalty which arises from the violation of such laws. The certification by the warehouseman shall be in substantially the following form:

CERTIFICATION

This is to certify that the commodity evidenced by warehouse receipt No. __ issued to __ is not subject to seizure or other action under weed control laws or regulations in effect at the point of storage. It is further certified and agreed that if such commodity is acquired by CCC in settlement of a loan or purchase agreement, the undersigned will save CCC from loss or penalty under weed control laws or regulations in effect at the point the commodity was stored under the above warehouse receipt.

(Signature)

(c) *Basic support rates for farm-stored loans.* (1) With respect to all commodities except peanuts, farm-stored loans shall be disbursed at the basic county support rate for the county where the commodity is stored adjusted for weed control law discounts.

(2) With respect to quota and additional peanuts, farm-stored loans shall be disbursed at the basic support rates established by CCC for such peanuts.

(d) *Basic support rates for warehouse-stored loans and purchases.* (1) With respect to all commodities except peanuts, warehouse-stored loans and purchase agreement payments shall be made on the basis of the basic county rate for the commodity adjusted for:

(i) Weed control law discounts; and

(ii) The schedule of premiums and discounts established for the commodity on the basis of quality factors set forth on warehouse receipts or supplemental certificates and for other quality factors, as determined and announced by CCC.

(2) With respect to quota and additional peanuts, payments made in accordance with a purchase agreement shall be at the basic support rate established by CCC for such peanuts.

(e) *Adjustment of basic county support rates.* (1) This paragraph is applicable to barley, rye, sorghum and wheat pledged as collateral for regular price support loans.

(2) The applicable basic support rate for commodities pledged as collateral for a warehouse-stored loan that were received by rail or combination barge-rail shall be the basic support rate established for the county from which the commodity was shipped. The support rate may be further adjusted when the commodity is moved in accordance with the terms and conditions prescribed by CCC on Form CCC-678-2, Advance Notification of Grain Movement By Producer; Form CCC-699, Reconcentration Agreement and Trust Receipt; or as otherwise determined and announced by CCC.

(3) The applicable basic county support rate for commodities delivered by truck by the producer to a warehouse at a normal delivery point shall be the support rate for the county where the commodity is stored, adjusted for the premiums and discounts determined by CCC. The basic county support rate for commodities delivered by truck by the producer to (i) an in-line warehouse, or (ii) a warehouse and shipped by truck, barge, or truck-barge to an in-line warehouse shall be the support rate for the county from which the commodity was shipped, adjusted for premiums and discounts determined by CCC. The support rate may be further adjusted when the commodity is moved in accordance with the terms and conditions prescribed by CCC on Form CCC-678-2, Advance Notification of Grain Movement By Producer; Form CCC-699, Reconcentration Agreement and Trust Receipt; or as otherwise determined and announced by CCC.

(4)(i) Supplemental certificates must be issued by the warehouse which receives commodities which have been moved in accordance with paragraphs (e) (2) and (3) of this section. Such certificates must show:

(A) The rate of freight paid into the storage point;

(B) The amount of any penalty for backhaul or out-of-line movement;

(C) The applicable normal trade channel market that would be used in commercial channels of trade; and

(D) Any other information which may be prescribed by CCC.

(ii) The warehouseman shall be responsible for the accuracy of such information and shall be liable for any cost incurred by CCC for the failure to comply with the provisions of this paragraph. After the acquisition of the warehouse receipt by CCC, such costs shall be determined in accordance with the provisions of the Uniform Grain Storage Agreement which has been executed by the warehouseman.

[53 FR 20284, June 3, 1988, as amended at 53 FR 47659—47660, Nov. 25, 1988]

§ 1421.8 Approved storage.

(a) *Farm Storage.* Approved farm storage shall consist of a storage structure located on or off the farm (excluding public warehouses) which is determined by CCC to afford safe storage of the commodity pledged as collateral for a price support loan. As may be determined and announced by the Executive Vice President, CCC, approved farm storage may also include on-ground storage, temporary storage structures, or other storage arrangements.

(b) *Warehouse Storage.* Approved warehouse storage shall consist of a public warehouse for which a CCC storage agreement for the commodity is in effect and which is approved by CCC for price support puposes. Such a warehouse is referred to in this subpart as an "approved warehouse". The names of approved warehouses may be obtained from the Kansas City Commodity Office or from State and county offices.

[53 FR 20285, June 3, 1988, and 53 FR 47659, Nov. 25, 1988]

§ 1421.9 Warehouse receipts.

(a) *General.* Warehouse receipts tendered to CCC with respect to a loan or purchase agreement must meet the provisions of this section and all other provisions of this part.

(b) *Manner of issuance and endorsement.* Warehouse receipts must be issued in the name of the eligible producer or CCC. If issued in the name of the eligible producer, the receipts must be properly endorsed in blank in order to vest title in the holder. Receipts must be issued by an approved warehouse and must represent a commodity which is deemed to be stored commingled. The receipts must be negotiable and must represent a commodity which is the same quantity and quality as the eligible commodity actually in storage in the warehouse of the original deposit: *Provided, however,* That warehouse receipts may be issued by another warehouse if the eligible commodity was reconcentrated in accordance with the provisions of § 1421.20(c).

(c) *Where warehouseman is also owner.* If the receipt is issued for a commodity which is owned by the warehouseman either solely, jointly, or in common with others, the fact of such ownership shall be stated on the receipt. In States where the pledge of warehouse receipts issued by a warehouseman on the warehouseman's commodity is invalid, the warehouseman may offer the commodity to CCC for loan or purchase if such warehouse is licensed and operating under the U.S. Warehouse Act. In such States, if the warehouseman is not licensed and operating under the U.S. Warehouse Act, the warehouseman may deliver the commodity to CCC for purchase if the warehouse receipt is issued in the name of CCC.

(d) *Insurance.* Each warehouse receipt or accompanying supplemental certificate representing a commodity stored in an approved warehouse which has a storage agreement with CCC shall indicate that the commodity is insured in accordance with such agreement. The cost of such insurance shall not be for the account of CCC.

(e) *Separate receipt.* A separate warehouse receipt must be submitted for each grade and class of any commodity tendered to CCC and, with respect to rice, such receipt must also state the milling yield of the rice.

(f) *Entries.* (1) Each warehouse receipt, or a supplemental certificate (in duplicate) which properly identifies the warehouse receipt, must indicate:

(i) The name and location of the storing warehouse;

(ii) The warehouse code assigned by CCC;

(iii) The warehouse receipt number;

(iv) The date the receipt was issued;

(v) The date the grain was deposited or received;

(vi) The date to which storage has been paid or the storage start date;

(vii) Whether the grain was received by rail, truck or barge;

(viii) The amount per bushel or hundredweight of prepaid in or out charges;

(ix) The signature of the warehouse operator or the authorized agent; and

(x) For warehouses operating under a merged warehouse code agreement (KCFL-614), the location and county to which the producer delivered the grain.

(2) In addition to the information specified in paragraph (f)(1) of this section, the following information must be provided with respect to the specified commodity:

(i) Barley:

(A) Gross weight in pounds and net bushels;

(B) Class and subclass;

(C) Grade (including special grades);

(D) Test weight;

(E) Moisture;

(F) Dockage; and

(G) Any other grading factor when such factor (not test weight) determines the grade.

(ii) Corn:

(A) Kind of Corn;

(B) Gross weight in pounds, and net bushels;

(C) Class;

(D) Grade (including special grades);

(E) Test weight;

(F) Moisture;

(G) Broken corn and foreign material; and

(H) Any other grading factor when such factor (not test weight) determines the grade.

(iii) Oats:

(A) Net weight and bushels;

(B) Grade (including special grades);

(C) Test weight;

(D) Moisture; and

(E) Any other grading factor when such factor (not test weight) determines the grade.

(iv) Peanuts: Any information required of a warehouseman in accordance with Part 1446 of this chapter.

(v) Rice:

(A) Grade;

(B) Net weight and net hundredweight;

(C) Class;

(D) Grading factors;

(E) Milling yield;

(F) Moisture; and

(G) If the rice is stored commingled.

(vi) Rye:

(A) Gross weight and net bushels;

(B) Grade (including special grades);

(C) Test weight;

(D) Moisture;

(E) Dockage; and

(F) Any other grading factor when such factor (not test weight) determines the grade.

(vii) Sorghum:

(A) Gross weight in pounds and net weight in hundredweight;

(B) Class;

(C) Grade;

(D) Test weight;

(E) Moisture;

(F) Dockage; and

(G) Any other grading factor when such factor (not test weight) determines the grade.

(viii) Soybeans:

(A) Net weight and bushels;

(B) Gross weight and bushels;

(C) Grade (including special grades);

(D) Test weight;

(E) Moisture;

(F) Percentage of foreign material; and

(G) Any other grading factor when such factor (not test weight) determines the grade.

(ix) Wheat:

(A) Gross weight and net bushels;

(B) Class and Subclass;

(C) Grade;

(D) Test weight;

(E) Moisture;

(F) Dockage;

(G) Protein content; and

(H) Any other grading factor when such factor (not test weight) determines the grade.

(g) *Warehouse recepts showing "Infested", excess moisture, or both.* If a warehouse receipt indicates that the commodity tendered for price support grades "Infested" or contains excess moisture, or both, the receipt must be accompanied by a supplemental certificate as provided in § 1421.18 in order for the commodity to receive price support. The grade, grading factors, and quantity to be delivered must be shown on the certificate as follows:

(1) When the warehouse receipt shows "Infested" and the commodity has been conditioned to correct the "Infested" condition, the supplemental certificate must show the same grade without the "Infested' designation and the same grading factors and quantity as shown on the warehouse receipt.

(2)(i) When the warehouse receipt shows that the commodity contained excess moisture and the commodity has been dried or blended, the supplemental certificate must show the grade, grading factors, and quantity after drying or blending of the commodity. Such entries shall reflect a drying or blending shrinkage as provided in paragraph (g)(2)(iii) of this section.

(ii) When a supplemental certificate is issued in accordance with paragraphs (g)(1) and (2)(i) of this section, the grade, grading factors and the quantity shown on such certificate shall supersede the entries for such items on the warehouse receipt.

(iii) If the commodity has been dried or blended to reduce the moisture content, the quantity specified on the warehouse receipt or the supplemental certificate shall represent the quantity after drying or blending. Such quantity shall reflect a minimum shrinkage in the receiving weight excluding dockage of 1.2 times the percentage difference between the moisture content of the commodity received and the following percentages for the specified commodity:

(A) Barley: 14.5 percent;
(B) Corn: 15.5 percent;
(C) Oats: 14.0 percent;
(D) Rye: 14.0 percent;
(E) Sorghum: 14.0 percent;
(F) Soybeans: 14.0 percent;
(G) Wheat: 13.5 percent; and
(H) Rice: 14.0 percent;

(h) *Liens* (1) If, in accordance with paragraph (g) of this section, a supplemental certificate is issued in connection with a warehouse receipt, such certificate must state that no lien for processing will be asserted by the warehouseman against CCC or any subsequent holder of such receipt.

(2) Warehouse receipts and the commodities represented by such receipts which are stored in an approved warehouse which is operating in accordance with a Uniform Grain Storage Agreement ("UGSA") or a Uniform Rice Storage Agreement ("URSA") may be subject to a lien for warehouse charges only to the extent provided in § 1421.10. In no event shall a warehouseman be entitled to satisfy such a lien by sale of the commodities when CCC is the holder of such receipt.

(i) *Freight certificate requirements.* Warehouse receipts representing commodities which have been shipped by rail and/or by barge, must be accompanied by supplemental certificates completed according to 1421.7(e).

[44 FR 2354, Jan. 11, 1979; 44 FR 6351, Feb. 1, 1979, as amended by Amdt. 3, 49 FR 46707, Nov. 28, 1984; 53 FR 20285, June 3, 1988, and amended at 53 FR 47659—47660, Nov. 25, 1988; 54 FR 52012, Dec. 20, 1989]

§ 1421.10 Warehouse charges.

(a) *Approved handling and storage rates.* CCC-approved handling and storage rates that may be deducted from loan and purchase proceeds are available in State and county offices. Such deductions shall be based upon the entries on the warehouse receipt or supplemental certificate, but in no case shall be higher than the CCC approved rate. No storage deduction shall be made if written evidence acceptable to CCC is submitted that:

(1) Storage charges through the maturity or expiration date have been prepaid; or

(2) The producer has arranged with the warehouseman for the payment of storage charges through the maturity or expiration date and the warehouseman enters an endorsement in substantially the following form on the warehouse receipt:

> Warehouse storage charges accrued or to accrue prior to the acquisition by CCC of the commodity represented by this warehouse receipt have been paid or otherwise provided for through the applicable maturity or expiration date and a lien for such charges will not be asserted by the warehouseman against CCC or against any subsequent holder of the warehouse receipt.

(b) *Storage costs.* The beginning date to be used for computing storage deductions on the commodity stored in an approved warehouse shall be the later of the following:

(1) The date the commodity was received or deposited in the warehouse;

(2) The date the storage charges start; or

(3) The day following the date through which storage charges have been paid.

[53 FR 20286, June 3, 1988 and 53 FR 47659, Nov. 25, 1988]

§ 1421.11 Liens.

If there are any liens or encumbrances on the commodity, waivers that fully protect the interest of CCC must be obtained even though the liens or encumbrances are satisfied from the loan or purchase proceeds. No additional liens or encumbrances shall be placed on the commodity after the loan is approved.

[44 FR 2354, Jan. 11, 1979. Redesignated at 53 FR 20286, June 3, 1988, as amended at 53 FR 47659—47660, Nov. 25, 1988]

§ 1421.12 Fees, charges, and interest.

(a) *Loan service fee.* A producer shall pay a nonrefundable loan service fee to CCC at a rate determined by CCC.

(1) $10 for each farm-stored loan that is disbursed and $1 for each bin in excess of one bin; and

(2) $6 for each warehouse-stored loan that is disbursed and $1 for each warehouse receipt in excess of one receipt that is submitted to CCC.

(b) *Delivery charges.* (1) A delivery charge shall be paid by a producer with respect to all commodities delivered to CCC at the following rates:

(i) One-half cent per bushel with respect to commodities handled on a bushel basis,

(ii) One cent per hundredweight with respect to commodities handled on a hundredweight basis;

(iii) 20 cents per each whole short ton with respect to peanuts.

(2) Delivery charges shall be paid at the time of settlement with respect to:

(i) Farm-stored loans; and

(ii) Purchase agreements.

(3) With respect to warehouse-stored loans, delivery charges shall be paid by the producer prior to the date the loan application is made and shall be deducted from the loan proceeds.

(c) *Interest.* Interest which accrues with respect to a loan shall be determined in accordance with Part 1405 of this chapter. Except with respect to called loans, loans which have not been repaid by the maturity date shall accrue interest in accordance with Part 1403 of this chapter beginning the day after the maturity date of the loan. With respect to called loans, interest shall accrue in accordance with Part 1403 of this chapter beginning on the required settlement date.

[53 FR 20286, June 3, 1988, and 53 FR 47659, Nov. 25, 1988, as amended at 53 FR 47660, Nov. 25, 1988; 54 FR 11500, Mar. 21, 1989; 54 FR 25445, June 15, 1989]

§ 1421.13 Insurance on farm storage loans.

CCC does not require the producer to insure the commodity placed under a farm storage loan, however, if the producer insures such commodity and an indemnity is paid thereon, such indemnity shall inure to the benefit of CCC to the extent of its interest after first satisfying the producer's equity in the commodity involved in the loss.

§ 1421.14 Setoffs.

(a) *Facility and drying equipment loans.* If any installment(s) on any loan made by CCC on farm storage facilities or drying equipment are due and payable under the provisions of the note evidencing such loan out of any amount due the producer under the regulations in this subpart, the amount due the producer, after deduction of applicable fees and charges and amounts due prior lienholders, shall be applied to satisfy the amounts due and payable on such installment(s).

(b) *Producers listed on county claim control record.* If the producer is indebted to CCC or to any other agency of the United States and such indebtedness is listed on the county claim control record, amounts due the producer under the regulations in this subpart, after deduction of amounts due and payable on farm storage facilities or drying equipment and other amounts provided in paragraph (a) of this section, shall be applied as provided in the Secretary's Setoff Regulations, Part 13 of this title, to such indebtedness.

[44 FR 2354, Jan. 11, 1979, as amended at 53 FR 6132, Mar. 1, 1988]

§ 1421.15 Loss or damage to the commodity.

The producer is responsible for any loss in quantity or quality of the commodity placed under a farm storage loan or identity preserved warehouse storage loan, or for any loss in quality of the commodity placed under a modified commingled warehouse storage loan. Notwithstanding the foregoing, any such loss occurring and reported to the county office after disbursement of the loan funds and prior to redemption or delivery to CCC may be assumed by CCC to the extent of the settlement value at the time of destruction of the quality of the commodity destroyed up to a quantity not in excess of that required to secure the outstanding loan (or if the commodity is not destroyed in an amount equivalent to the extent of the loss or damage as determined by CCC), less any insurance proceeds to which CCC may be entitled and the salvage value of the commodity, if the producer establishes to the satisfaction of CCC each of the following conditions:

(a) The physical loss or damage occurred without fault or negligence on the part of the producer or any other person having control of the storage structure;

(b) The physical loss or damage resulted solely from an external cause such as fire which is not the result of improper storage of the commodity; windstorm; or flood. CCC will not assume any loss or damage resulting from insect infestation, rodents, vermin, spontaneous combustion, excessive heat, or theft.

(c) The producer has given the county office immediate notice of such loss or damage prior to redemption or delivery to CCC; and

(d) The producer has made no fraudulent representation in the loan documents or in obtaining the loan. No physical loss or damage occurring prior to the date of disbursement of the loan funds to the producer will be assumed by CCC.

[44 FR 2354, Jan. 11, 1979, as amended at 53 FR 6133, Mar. 1, 1988]

§ 1421.16 Personal liability of the producers.

(a) *Fraud related to loans and unauthorized disposition of loan collateral.* (1) If a producer:

(i) Makes any fraudulent representation in obtaining, maintaining, or settling a loan; or

(ii) Disposes or moves the loan collateral without the approval of CCC, such loan shall be payable upon demand by CCC. The producer shall be liable for:

(A) The amount of the loan;

(B) Any additional amounts paid by CCC with respect to the loan;

(C) All other costs which CCC would not have incurred but for the fraudulent representation or the unauthorized disposition or movement of the loan collateral; and

(D) Interest on such amounts. The payment of such amounts may not be satisfied by the forfeiture of loan collateral to CCC of commodities with a settlement value that is less than the total of such amounts.

(2) If a producer has made any such fraudulent representation or if the producer has disposed of, or moved, the loan collateral, the value of such collateral shall be determined by CCC on the following basis:

(i) With respect to farm-stored loans, the lower of:

(A) The market value of the commodity, as determined by CCC, as of the date of delivery to, or removal by, CCC; or

(B) The loan settlement value of the commodity.

(ii) With respect to warehouse-stored loans, the lower of:

(A) The market value of the commodity at the close of the market on the final date for repayment; or

(B) The loan settlement value of the commodity.

(iii) Notwithstanding the provision of paragraphs (a)(2) (i) and (ii) of thi section, if CCC sells the loan collatera in order to determine the marke value of the commodity, the lower of

(A) The sales price of the commodit less any costs incurred by CCC in completing the sale; or

(B) The loan settlement value of th commodity.

(b) *Fraud relating to purchases.* (1 If a producer makes any fraudulen representation with respect to obtaining a purchase agreement or deliver of a commodity in accordance wit such an agreement, the producer shal be liable for:

(i) The purchase amount paid to th producer by CCC;

(ii) All other costs which CCC woul not have incurred but for the producer's fraudulent representation; and

(iii) Interest on such amounts.

The payment of such amounts ma not be satisfied by the delivery, in accordance with such an agreement, o commodities to CCC with a settlemen value that is less than the total o such amounts.

(2) If a producer has made any suc fraudulent representation, the valu of the commodity shall be the lowes of the following, as determined b CCC:

(i) The market value of the commodity, as determined by CCC, at the clos of the market on the date of deliver to CCC;

(ii) The sales price of the commodit less any costs incurred by CCC if th commodity is sold by CCC in order t determine the market value of th commodity; or

(iii) The basic support rate applic ble to the commodity.

(c) *Poisonous substances and contamination.* A producer shall be personally liable for any damages resulting from delivering to CCC a commodity containing mercurial compounds, toxin producing molds, or other substances poisonous to humans or animals.

(d) *Overdisbursement.* If the amount disbursed under a loan or purchase agreement, or in settlement thereof, exceeds the amount authorized by this Part, the producer shall be liable for repayment of such excess, plus interest.

(e) *Undercollection.* If the amount collected from the producer in satisfaction of the loan is less than the amount required according to this part, the producer shall be personally liable for repayment of the amount of such deficiency.

(f) *Joint loans.* In the case of joint loans, the personal liability for the amounts specified in this section shall be joint and several on the part of each producer signing the note.

[44 FR 2354, Jan. 11, 1979, as amended at 53 FR 6133, Mar. 1, 1988; 53 FR 20287, June 3, 1988, and 53 FR 47659, Nov. 25, 1988]

§ 1421.17 Farm-stored loans.

(a)(1) *Quantity for loans.* The quantity of a commodity which shall be used to determine the amount of a farm storage loan shall not exceed a percentage (hereinafter called the "loan percentage"), as established by the State committee, of the certified or measured quantity of the eligible commodity stored in approved farm storage and covered by the note and security agreement. The quantity of a commodity pledged as security for a farm-storage loan shall be measured or certified in accordance with paragraph (e) of this section. Farm storage loans may be made on less than the maximum quantity eligible for loan at the producer's request. However, all of the commodity in a bin, crib, or lot shall be pledged as security for a farm storage loan although only a portion thereof would otherwise be adequate security for the amount of the loan.

(2) With respect to additional peanuts, loans shall be made on 100 percent of the estimated quantity pledged as collateral for a farm-stored loan. With respect to ear corn, the loan percentage may not exceed 90 percent. With respect to all other commodities, the State committee may establish a loan percentage, which does not exceed a percentage established by CCC, each year for each commodity on a Statewide basis or for specified areas within the State. The factors to be considered by the State committee in determining loan percentages shall include but are not limited to:

(i) General crop conditions;

(ii) Factors affecting quality peculiar to an area or State; and

(iii) Climatic conditions affecting storability.

(3) The loan percentages established by the State committee may be reduced by the county committee on an individual farm or producer basis in order to provide CCC with adequate protection. The factors to be considered by the county committee in reducing the loan percentages shall include but not be limited to:

(i) The condition or suitability of the storage structure;

(ii) The condition of the commodity; and

(iii) The hazardous location of the storage structure, such as a location which exposes the structure to danger of flood, fire, and theft by a person not entrusted with possession of the commodity.

(b) *Commingling eligible and ineligible commodity.* If an eligible quanity of a commodity has been commingled with an ineligible quantity of the commodity, the commingled commodity is not eligible to be pledged as collateral for a loan unless: (1) The producer has received prior approval from the county ASCS office to commingle the commodity as evidenced by an approved form CCC-687-1, Approval to Commingle or Move Loan Collateral, and the eligible or ineligible commodity has been measured by a representative of the county ASCS office; or (2) the producer has made a certification with respect to the acreage planted to the commodity which is to be commingled for all farms in which the producer has an interest. When certifying to the acreage on all farms in which interest is held, the producer must provide acceptable evidence of the production or purchase of the commodity from which the county committee may determine whether the eligible production claimed by the producer is reasonable in relation to the production practices on such farm or similar farms in the same county; or have either the eligible or ineligible commodity measured by a representative of the county ASCS office. Peanuts pledged as collateral for a loan must be stored separately from peanuts produced on any other farm and handled in such a manner that only the actual peanuts produced on the farm and on no other farm will be delivered to CCC.

(c) *Transfer from farm storage loans to warehouse storage loans.* Upon request by the producer, the county committee may approve the transfer of a commodity or part thereof which is under a farm storage loan to a warehouse storage loan at any time during the loan period. In the case of emergency transfers, the producer must make the request in writing describing the emergency. Liquidation of the farm storage loan or part thereof shall be made through the pledge of warehouse receipts for the commodity placed under warehouse storage loan and the immediate payment by the producer of the amount by which the warehouse storage loan is less than the farm storage loan or part thereof plus interest. Any amounts due the producer shall be disbursed by the county office. The maturity date of the warehouse storage loan shall be the maturity date applicable to the farm storage loan which was transferred.

(d) *Transfer from warehouse storage loan to farm storage loan.* Upon request by the producer, the county committee may authorize the transfer of a warehouse storage loan or part thereof to a farm storage loan. The producer must immediately repay the amount by which the farm storage loan is less than the warehouse storage loan plus interest on the shortage. Such farm storage loans shall be made in the manner prescribed herein and the maturity date shall be the maturity date applicable to the warehouse storage loan which was transferred.

(e) *Producer certification.* The quan
tity of a commodity pledged as secur
ty for a farm storage loan may be de
termined on the basis of the quantit
of the commodity which an eligib
producer certifies in writing on Forr
CCC-666 is eligible to be pledged a
collateral and is otherwise availab
for loan purposes. The maximum loa
percentage with respect to barle
corn, and sorghum when they are cor
sidered to be high moisture commod
ities shall be 75 percent of the quant
ty certified by the producer, unles
such loan percentage is reduced by th
State or county committee in accord
ance with paragraph (a) of this se
tion.

(f) *Producer incorrect certificatio*
(1) If the county committee dete
mines, by measurement or otherwis
that the actual quantity serving as co
lateral for a loan based on certific
tion by the producer is less than th
loan quantity, the county committe
shall call the loan. The producer sha
have ten days to settle the loan; How
ever, the producer may request recor
sideration of the call and provide ir
formation regarding the circumstance
leading to the incorrect certification
The county committee may approv
the producer's request if: (i) The ci
cumstances are of a highly meritoriou
nature, (ii) the producer acted in goo
faith, (iii) the producer did not know
ingly provide an incorrect certificatio
and made a reasonable attempt to de
termine the quantity, (iv) the produc
er repays the overdisbursement. If th
loan is called, the county committe
may refuse to approve any furthe
farm stored loans for the producer o
any commodity through the end o
the next crop year after the crop yea
in which the incorrect certificatio
was made and, if the county commit
tee feels the seriousness of the matte
justifies such action, refer the case t
the State committee which may re
quest the Office of Inspector Genera
of the United States Department o
Agriculture (hereinafter referred to a
OIG) to make an investigation.

(2) If the producer has incorrectl
certified such quantities on more tha
one occasion, the county committe
shall call the loan or loans involve
and approve no further farm store

loans for the producer on any commodity through the end of the next crop year after the crop year in which the incorrect certification was made. If the county committee feels the seriousness of the matter so justifies, they may deny further farm stored loans to the producer for more than one year. They may also refer the case to the State committee which may request OIG to make an investigation.

(g) *Unauthorized removal and unauthorized disposition.* If there has been an unauthorized removal or unauthorized disposition of any part of farm-stored collateral, the county committee may:

(1) Call the loan involved,

(2) Refuse to approve any further farm-stored loans for the producer with respect to any commodity for a period determined to be appropriate by the county committee, and

(3) Take other actions deemed necessary.

(h) *Liquidated damages.* If unauthorized disposition of a quantity of a commodity occurs, liquidated damages shall be assessed, in addition to any applicable interest with respect to the loan, on the quantity so disposed of beginning on the date the county committee has determined the unauthorized disposition occurred and shall continue until the loan is repaid. If the date of the unauthorized disposition of the loan collateral cannot be determined, such disposition shall be considered to have occurred on the later of: (1) The day following the latest inspection of the collateral by an ASCS representative, or (2) the day following disbursement of the loan. Liquidated damages shall be computed by multiplying the loan principal which represents the quantity so disposed by 50 percent of the rate of interest which is charged by CCC with respect to delinquent debts at the time the unauthorized disposition is determined to have occurred.

(i) *Waiver of liquidated damages.* If liquidated damages are assessed in accordance with paragraph (h) of this section, the county committee may waive some or all of such liquidated damages if the county committee determines that: (1) The violation occurred inadvertently or because the producer acted to prevent spoilage of the commodity, and (2) the violation did not result in harm or damage to the right or interest of any person or government agency. The county committee shall furnish a copy of its determination to the Administrator, ASCS, and the State committee. If the determination of the county committee is not disapproved by either the Administrator, ASCS, or his designee, or the State committee within sixty days from the date the determinations are received, such determination shall be considered to have been approved.

(j) *Quantity delivered.* The quantity of a commodity acquired by CCC in accordance with a farm-stored loan shall be determined on the basis of the weight of the commodity at the time of delivery to CCC.

[44 FR 2354, Jan. 11, 1979; 44 FR 6351, Feb. 1, 1979, as amended by Amdt. 3, 49 FR 46707, Nov. 28, 1984; 50 FR 42511, Oct. 21, 1985; 53 FR 20287, June 3, 1988, and 53 FR 47659, Nov. 25, 1988]

§ 1421.18 Warehouse-stored loans.

(a) *Quantity for loan.* The quantity of a commodity which may be pledged as collateral for a loan shall be the quantity delivered to, or acquired by, CCC at an approved warehouse. Such quantity shall be the net weight specified on the warehouse receipt or supplemental certificate.

(b) *Grade requirements.* (1) In order to be eligible to be pledged as collateral for a loan, the commodity must not be "Sample Grade" and must meet the requirements of § 1421.5 and this section.

(2) Barley must grade No. 5 or better except that:

(i) The barley may have the following special grade designations: "Bright"; "Stained"; "Garlicky"; and, in Alaska only, "Tough";

(ii) The barley must not grade "Infested" or have moisture in excess of 14.5 percent unless a supplemental certificate is provided in accordance with § 1421.9; and

(iii) The barley may not have any of the following special grade designations:

(A) Blighted.

(B) Bleached.

(C) Ergoty.

(D) Smutty.

(3)(i) Corn must grade No. 3 or better except that the corn may have the following special grade designations: "Flint", "Flint and dent", or "Waxy"; and

(ii) The corn must not grade "Infested" or have moisture in excess of 15.5 percent unless a supplemental certificate is provided in accordance with § 1421.9.

(4)(i) Oats must grade No. 3 or better, except that the oats may have the special grade designation "Garlicky";

(ii) The oats must not grade "Smutty"; "Ergoty"; "Bleached"; "Thin"; Tough"; or otherwise be of distinctly low quality; and

(iii) The oats must not grade "Infested" or have moisture in excess of 14.0 percent unless a supplemental certificate is provided in accordance with § 1421.9.

(5) Rice must grade No. 5 or better and must not have moisture in excess of 14.0 percent. Rice of special grades shall not be eligible.

(6)(i) Rye must grade No. 2 or better except that the rye may grade No. 3 because of "Thin" rye, or grade No. 3 or No. 4 on the factors of test weight or damaged kernels (total) or both;

(ii) The rye must not grade "Smutty"; "Light Smutty"; "Garlicky"; "Light"; "Light Garlicky"; and

(iii) The rye must not grade "Infested" or have moisture in excess of 14.0 percent unless a supplemental certificate is provided in accordance with § 1421.9.

(7)(i) Sorghum must grade No. 4 or better except that the sorghum may have the special grade designation of "Smutty"; and

(ii) The sorghum must not grade "Infested" or have moisture in excess of 14.0 percent unless a supplemental certificate is provided in accordance with § 1421.9.

(8)(i) Soybeans must grade No. 4 or better;

(ii) The soybeans must be adjusted for foreign material exceeding 1 percent;

(iii) The soybeans may not grade "Garlicky"; and

(iv) The soybeans may not gra
"Infested" or have moisture in exce
of 14.0 percent unless a supplement
certificate is provided in accordan
with § 1421.9.

(9)(i) Wheat must grade No. 5
better;

(ii) If the wheat is of the cla
"Mixed Wheat", the wheat must co
sist of mixtures of grades of eligib
wheat as provided in paragrap
(b)(9)(i) of this section, if such mi
tures are the result of natural cond
tions;

(iii) The wheat may have the speci
grade designations "Garlicky
"Smutty", or "Lightly Smutty";

(iv) The wheat must not grac
"Ergoty", or "Treated"; and

(v) The wheat must not grade "I
fested" or have moisture in excess
13.5 percent unless a supplement
certificate is provided in accordanc
with § 1421.9.

[53 FR 20287, June 3, 1988, and amended
53 FR 47659-47660, Nov. 25, 1988; 54 F
30717, July 24, 1989; 54 FR 52012, Dec. 2
1989]

§ 1421.19 Liquidation of Loans.

(a) *General.* If a producer does no
pay to CCC the total amount due i
accordance with a loan, CCC sha
have the right to acquire title to th
loan collateral and to sell or otherwis
take possession of such collatera
With respect to farm-stored loans, th
producer shall deliver the collatera
for such loan, or other eligible com
modities of the same kind, in accord
ance with instructions issued by CCC
CCC will not accept delivery of an
quantity of a commodity in excess o
the larger of:

(1) 110 percent of the quantity
pledged as collateral for such a loan
or

(2) A sufficient quantity having a
settlement value equal to the loan
amount.

(b) *Delivery by the producer.* If the producer desires to deliver eligible commodities to CCC in satisfaction of the loan, the producer must notify CCC of such intention before the loan maturity date by giving written notice to the county office which disbursed the proceeds for such loan. If the producer fails to deliver such commodities to CCC by the date specified on Form CCC-691, Commodity Delivery Notice, and the producer subsequently redeems the commodity pledged as collateral for the loan before delivery is completed, interest shall continue to be assessed on such amount in accordance with Part 1403 of this chapter.

(c) *Commodity going out of condition.* If, either before or after maturity, the commodity is going out of condition or is in danger of going out of condition, the producer shall so notify the county office and confirm such notice in writing. If the county committee determines that the commodity is going out of condition or is in danger of going out of condition and the commodity cannot be satisfactorily conditioned by the producer and delivery cannot be accepted within a reasonable length of time, the county committee shall arrange for an inspection and grade and quality determination. When delivery is completed, settlement shall be made subject to the provisions of § 1421.15 on the basis of such grade and quality determination or on the basis of the grade and quality determination made at the time of delivery, whichever is higher, for the quantity actually delivered.

(d) *Delivery before maturity date.* If the producer loses control of the storage structure, or if there is insect infestation that cannot be controlled, danger of flood, or damage to the storage structure making it unsafe to continue storage of the commodity on the farm, the commodity may be delivered before the maturity date of the loan upon prior approval of the county committee. Settlement will be made with the producer as provided in § 1421.22.

(e) *Acquired commodities.* Producers may acquire commodities which are not otherwise eligible to be tendered to CCC as collateral for price support loans and surrender such commodities to CCC in lieu of delivering to CCC the commodity pledged as farm-stored loan collateral in accordance with the terms and conditions prescribed by CCC.

[44 FR 2354, Jan. 11, 1979, as amended by Amdt. 3, 49 FR 46708, Nov. 28, 1984; 53 FR 6133, Mar. 1, 1988; 53 FR 20288, June 3, 1988 and 53 FR 47659, Nov. 25, 1988]

§ 1421.20 Release of the commodity under loan.

(a) *Obtaining release—farm storage loan.* A producer shall not dispose any commodity which is pledged as collateral for a loan until prior written approval for such disposition has been provided by the county committee in accordance with § 1421.8. A producer may at any time obtain the release of all or any part of the commodity remaining as loan collateral by paying to CCC, with respect to the quantity of the commodity released: (1) The principal amount of the loan which is outstanding plus interest, or (2) if CCC so announces, an amount less than the principal amount of the loan under the terms and conditions specified by CCC at the time the producer redeems the commodity pledged as collateral for such loan. CCC will permit removal of a quantity of the commodity from storage, without the payment to CCC of the loan amount, if the principal amount outstanding on such loan does not exceed the maximum loan value of the quantity of the commodity remaining in storage after removal of the quantity requested by the producer. When the proceeds of the sale of the commodity are needed to repay a farm storage loan, the producer must request and obtain prior written approval of the county ASCS office on a form prescribed by CCC in order to remove a specified quantity of the commodity from storage. Any such approval shall be subject to the terms and conditions set forth in the applicable form, copies of which may be obtained by producers at the county ASCS office. Any such approval shall not constitute a release of CCC's security interest in the commodity or release the producer from liability for any amounts due and owing to CCC with respect to the loan indebtedness if full payment of such amounts is not received by the county ASCS office. If a producer fails to repay a loan within the time period prescribed by CCC for a farm-storage loan and commodity pledged as loan collateral has been delivered to a buyer in accordance with Form CCC-681-1, Marketing Authorization, liquidated damages shall be assessed, in addition to any applicable interest due on the loan, on the quantity of the commodity removed with such authorization. Such liquidated damages shall be assessed beginning on the earlier of: (i) The expiration date of such marketing authorization, or (ii) the date delivery of the commodity to the buyer is completed, and shall continue until the loan is repaid. Liquidated damages shall be computed by multiplying the loan principal on the quantity removed with such authorization by 50 percent of the rate of interest which is charged by CCC with respect to delinquent debts on the date that liquidated damages are first assessed.

(b) *Release of farm storage note and security agreement.* The note and security agreement shall not be released until the loan has been satisfied in full.

(c) *Obtaining release, warehouse storage loans.* (1) The producer may arrange with the county ASCS office for the release of all or part of the commodity which is pledged as collateral for a warehouse storage loan at or prior to the maturity of such loan by, with respect to the quantity of the commodity to be released, paying to CCC: (i) The principal amount of the loan plus interest, or (ii) if CCC so announces, an amount less than the principal amount of the loan under the terms and conditions specified by CCC at the time the producer redeems the commodity pledged as collateral for such loans. Each partial release of the loan collateral must cover all of the commodity represented by one warehouse receipt. Subject to the provision of § 1421.4(i), warehouse receipts redeemed by repayment shall be released only to the producer or the producer's authorized agent, except that redeemed warehouse receipts may be released to persons who may be designated in a written authorization which is filed with the county office by the producer or the producer's authorized agent and which is dated within 15 days prior to the date of repayment.

(2) Upon the filing of Form CCC-699, Reconcentration Agreement and Trust Receipt, by the producer and warehouseman, CCC may during the loan period approve the reconcentration in another CCC-approved warehouse of all or part of a commodity which is pledged as collateral for a warehouse storage loan. Any such approval shall be subject to the terms and conditions set forth in Form CCC-699, Reconcentration Agreement and Trust Receipt.

(3) A producer may, before the new warehouse receipt is delivered to CCC, pay to CCC: (i) The principal amount of the loan, plus interest and applicable charges, or (ii) if CCC so announces, an amount less than the principal amount of the loan under the terms and conditions specified by CCC at the time the producer redeems the commodity pledged as collateral for such loan. If the commodity being reconcentrated is pledged as collateral for an extended price support loan under the Farmer-Owned Grain Reserve Program, the producer shall pay early redemption charges which are applicable in accordance with §§ 1421.733 and 1421.753. The maturity date of the new warehouse storage loan shall be the maturity date applicable to the original warehouse storage loan.

(d) *Release of warehouse storage note and security agreement.* The note and security agreement shall not be released until the loan has been satisfied in full.

[44 FR 2354, Jan. 11, 1979, as amended at 51 FR 8455, Mar. 11, 1986; 51 FR 36905, Oct. 16, 1986; 53 FR 6133, Mar. 1, 1988. Redesignated at 53 FR 20287, June 3, 1988, and amended at 54 FR 52012, Dec. 20, 1989]

§ 1421.21 Purchase agreements.

(a) *Quantity eligible for purchase.* An eligible producer may sell to CCC any or all of the producer's eligible commodity which is not pledged as collateral for a price support loan. A producer who has executed a price support purchase agreement may execute a price support loan with respect to the same commodities prior to the final loan availability date. In such event, the loan shall have a maturity date which is last day of the ninth calendar month following the month in which the loan application is made.

CCC will not accept delivery of any quantity in excess of 110 percent of the quantity stated in the purchase agreement. Settlement of the quantity not in excess of 110 percent of the quantity stated in the purchase agreement shall be made in accordance with § 1421.22.

(b) *Delivery period.* (1) In the case of an eligible commodity not in an approved warehouse, the producer must make delivery of the commodity the producer desires to sell to CCC within the period of time after the expiration date of the purchase agreement as specified in delivery instructions issued by the county office.

(2) In the case of eligible commodities stored in an approved warehouse, the producer must submit to the county office, not earlier than 10 days before the expiration date of the purchase agreement nor later than the day after such date, warehouse receipts for the quantity of the commodity the producer elects to sell to CCC. Notwithstanding any of the provisions of this § 1421.21, in the case of an eligible farm stored commodity covered by an approved Purchase Agreement (Form CCC-614) the county committee may, on request of the producer, authorize early delivery of the commodity if the producer loses control of the storage structure or if there is insect infestation that cannot be controlled, danger of flood or damage to the storage structure, making it unsafe to continue storage of the commodity on the farm.

[44 FR 2354, Jan. 11, 1979; 44 FR 6351, Feb. 1, 1979; 53 FR 20288, June 3, 1988, and 53 FR 47659, Nov. 25, 1988]

§ 1421.22 Settlement.

(a) *General.* The settlement of loans and purchase agreements shall be made by CCC on the basis of the grade, quality, and quantity of the commodity delivered to CCC by the producer.

(b) *Commodities stored in approved warehouses.* Settlements made by CCC with respect to eligible commodities which are acquired by CCC and which are stored in an approved warehouse shall be made on the basis of the entries set forth in the applicable warehouse receipt, supplemental certificate, and other accompanying documents.

(c) *Commodities stored in facilities other than approved warehouses.* (1) All eligible commodities which are stored in other than approved warehouses shall be delivered to CCC in accordance with instructions issued by CCC. Settlement for such commodities shall be made on the basis of entries set forth in the applicable warehouse receipt, supplemental certificate, and other accompanying documents.

(2) With respect to barley, corn, oats, rye, sorghum, soybeans, and wheat which are delivered from other than an approved warehouse, settlement shall be made by CCC on the basis of the basic support rate which is in effect for the commodity at the producer's customary delivery point, as determined by CCC.

(3)(i) With respect to peanuts, settlement values for quota and additional peanuts shall be determined and announced annually by CCC. Settlement shall be made by CCC on the amount computed on the basis of net weight and quality of such peanuts with an allowance of 4 percent for Virginia type peanuts and an allowance of 3.5 percent for other types of peanuts in order to compensate producers for shrinkage during storage on peanuts delivered on or after January 31 of the year following the year in which the crop was produced less discounts of:

(A) $2 per ton, net weight, for each full 1 percent of foreign material in excess of 10 percent; and

(B) $10 per ton, net weight, for peanuts containing more than 10 percent moisture.

(ii) No allowance for shrinkage shall be made for storage with respect to peanuts delivered before February 1 of the year following the year in which the crop was produced.

(iii) If a producer delivers peanuts from a farm to CCC in a quantity that would exceed the farm poundage quota when added to the peanuts marketed, and considered marketed from the farm as quota peanuts, the additional peanut support rate shall be used with respect to such peanuts if CCC determines that the producer made an inadvertent error in determining the quantity of peanuts pledged as collateral as quota peanuts. If CCC determines that such error was not inadvertent, price support shall not be made available with respect to such quantity and marketing quota penalties shall be assessed in accordance with Part 729 of this title.

(iv) The support rate for additional peanuts shall be used for all peanuts which do not grade "Segregation 1" at the time of delivery to CCC if the producer does not elect to settle such additional peanuts as quota peanuts. If the producer elects to settle such peanuts as quota peanuts, the quantity shall not exceed the lesser of:

(A) The difference between the production of Segregation 1 peanuts on the farm and the farm poundage quota; or

(B) The amount of the undermarketings of quota peanuts as shown on the farm marketing card.

(4) With respect to rice acquired by CCC at a location other than an approved warehouse, settlement shall be made on the basis of the class, grade, and quality entries set forth in the Federal-State inspection certificate and on the basis of the quantity set forth in the weight certificates. If rice is pledged as collateral for a farm-stored loan in an area where a location differential is in effect and such rice is delivered to CCC in an area where a differential is not applicable, settlement shall be made by CCC on the basis of the basic support rate which is in effect for the area in which delivery is made.

[53 FR 20288, June 3, 1988, and 53 FR 47659, Nov. 25, 1988]

§ 1421.23 Foreclosure.

(a) *Removal from storage.* If the loan indebtedness (i.e., the amount of the note, interest, and charges) is not satisfied upon maturity, CCC may remove the commodity from storage, and assign, transfer, and deliver the commodity or documents evidencing title thereto at such time, in such manner, and upon such terms as CCC may determine, at public or private sale. Any such disposition may similarly be effected without removing the commodity from storage. The commodity may be processed before sale and CCC may become the purchaser of the whole or any part of the commodity.

(b) *When CCC takes title to commodity.* Upon maturity and nonpayment of the producer's note, title to the unredeemed collateral securing the note shall, at CCC's election, immediately vest in CCC without a sale thereof. When CCC acquires title to the unredeemed collateral, CCC shall have no obligation to pay for any market value which such collateral may have in excess of the loan indebtedness, i.e., the unpaid amount of the note plus interest and charges.

(c) *Commodity sold at less than amount due on loan.* If a farm stored commodity removed by CCC from storage is sold at less than the amount due on the loan (excluding interest) the producer shall pay to CCC the difference between the amount due on the loan and the higher of the sales proceeds or the settlement value of the commodity removed by CCC plus interest on such difference. The amount of the deficiency may be set off against any payment which would otherwise be due the producer under any other agricultural program administered by the Secretary of Agriculture or any other payments which are due or may become due the producer from CCC or any other agency of the United States.

[44 FR 2354, Jan. 11, 1979, as amended at 53 FR 6132, Mar. 1, 1988]

§ 1421.24 Protein determinations.

(a) *Protein content determinations for warehouse-stored wheat.* With respect to Hard Red Winter and Hard Red Spring wheat tendered to CCC which is stored in an approved warehouse, producers must obtain official protein content determinations or protein content determinations arrived at by mutual agreement between the producer and the warehouseman. Costs of such determinations shall not be paid by CCC.

(b) *Protein content determinations for farm-stored wheat.* A producer may request a CCC determination of the protein content of wheat pledged as collateral for a farm-stored loan. Such a request must be made at the county office and the producer must pay a fee, as determined by CCC, for each bin which is tested. For purposes of loan disbursements, the basic support rate shall be adjusted to reflect the protein content. However, settlement of the loan shall be made by CCC on the basis of the protein content of the wheat at the time of delivery to CCC.

[53 FR 20289, June 3, 1988, and 53 FR 47659, Nov. 25, 1988]

§ 1421.25 Rice marketing loans and marketing certificates.

(a) *Marketing loans.* A producer may repay a loan at a level that is the lesser of:

(1) The loan level determined for a crop; or

(2) The higher of:

(i) The loan level determined for such crop multiplied by 60 percent for the 1988 crop; and 70 percent for the 1989 and 1990 crops; or

(ii) The prevailing world market price, as determined by CCC. As a condition of permitting a producer to repay such a loan, CCC may require the producer to purchase CCC commodity certificates equal in value to an amount that does not exceed one-half the difference between the principal amount of the loan and the loan repayment amount.

(b) *Commodity certificates.* If CCC determines that, at anytime between August 1, 1986 and July 31, 1991, the world market price of a class of rice, as determined by CCC, is below the current loan repayment rate for a class of rice, CCC shall issue commodity certificates to persons who have entered into an agreement with CCC with respect to the issuance and exchange of such certificates. The value of such certificates shall be based upon the difference between:

(1) The loan repayment rate for such class of rice; and

(2) The prevailing world market price for such class of rice, as determined by CCC.

(c) *Payments.* Payments made in accordance with this section shall be made in a manner determined by CCC.

[53 FR 20289, June 3, 1988, and 53 FR 47659, Nov. 25, 1988]

§ 1421.26 Transfer of farm-stored loan to warehouse stored association loan.

Producers may deliver peanuts under a farm-stored loan to the association and obtain loan advances on such peanuts with the prior approval of the county office anytime on or before January 31 following the calendar year in which the crop was grown. Association advances shall be payable jointly to the producer and the CCC and shall be used to settle the farm-stored loan.

[47 FR 54282, Dec. 2, 1982. Redesignated at 53 FR 20289, June 3, 1988, and 53 FR 47659, Nov. 25, 1988]

§ 1421.27 Producer-handler purchases of additional peanuts under loan.

(a) *General.* Producer-handlers may, at any time before loan maturity, forfeit their additional peanuts to CCC and immediately repurchase such peanuts from CCC by paying the amount necessary under the following sales policies:

(1) For unrestricted use, at 105 percent of the quota loan rate, if purchased before December 31 of the calendar year in which the crop was grown, and at 107 percent of the quota loan rate, if purchased after December 31 of the calendar year in which the crop was grown.

(2) For edible export, at the sales price determined and announced by CCC.

(3) For crushing (either domestic or export), at the additional support level.

(b) *Purchases on or before January 31 following the calendar year in which the crop was grown.* The county committee shall determine the sale price under the appropriate sales policy specified in paragraph (a). Loans will be settled at the county office, and amounts collected in excess of that necessary to settle loans will be remitted to the association for the respective area. The association will credit such amounts to the appropriate price support loan pool. The producer should be listed as a participant in the loan pool for the purpose of determining and distributing net gains from the loan pool.

(c) *Purchases after January 31 following the calendar year in which the crop was grown.* The county committee shall determine the sale price under the appropriate sales policy specified in paragraph (a). Any amount collected in excess of the loan indebtedness shall accrue to CCC.

[47 FR 54282, Dec. 2, 1982. Redesignated and amended at 53 FR 20289, June 3, 1988, and 53 FR 47659, Nov. 25, 1988]

§ 1421.28 Required producer-handler records and supervision of farm-stored additional peanuts under loan or purchased by a producer-handler from loan.

(a) *Required records*—(1) *Inspected Peanuts.* Each producer-handler shall maintain records as required in 7 CFR Part 1446 for all additional peanuts which are purchased and sold for which an ASCS-1007, Inspection Certificate and Sales Memorandum, is issued.

(2) *Peanuts which are not inspected.* The following records shall be maintained for all peanuts purchased from CCC which are not inspected. Each producer-handler shall maintain records which show all sales and other disposals of peanuts. Such records shall show date of sale, quantity, type, and to whom sold. Records shall be maintained in such a manner which will enable the county office to readily reconcile quantities sold with all peanuts produced by the producer. All records shall be maintained for a period of three years following the end of the marketing year in which the peanuts were produced.

(b) *Supervision of farm-stored peanuts*—(1) *Under loan.* The county office shall inspect and account for all additional peanuts under loan as determined necessary by the county committee.

(2) *Additional peanuts purchased for use as seed and not inspected.* The county office shall supervise the disposition of all additional peanuts purchased for use as seed and not inspected. The identical peanuts under loan must be disposed of and the producer must account for all peanuts which were under additional loan. The producer-handler shall request a county office representative to supervise the disposition of the peanuts and shall give the county office at least 3 working days notice of the date of such disposition. The county office shall determine the extent to which supervision is needed.

(3) *Additional peanuts on which ASCS-1007 is issued.* The producer-handler shall be subject to all provisions in Part 1446 relating to the disposition of additional peanuts.

(c) *Costs of supervision.* The producer-handler shall pay all costs of supervision, as determined by the county committee for county office supervision when county office supervision is completed, and or determined by the association for peanuts supervised by association representatives when association supervision is completed.

(d) *Penalties.* The producer-handler is subject to penalties as provided in § 1446.59 with respect to any peanuts purchased in accordance with § 1421.27.

[47 FR 54282, Dec. 2, 1982. Redesignated and amended at 53 FR 20289-20290, June 3, 1988, and 53 FR 47659, Nov. 25, 1988]

§ 1421.29 Death, incompetency, or disappearance.

In case of the death, incompetency, or disappearance of any producer who is entitled to the payment of any sum in settlement of a loan or a purchase, payment shall, upon proper application to the county office which made the loan or purchase, be made to the persons who would be entitled to such producer's payment under the regulations contained in Part 707 of this title—Payments Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent.

[44 FR 2354, Jan 11, 1979. Redesignated at 53 FR 20289, June 3, 1988]

§ 1421.30 Recourse loans.

CCC may make recourse loans available to eligible producers. Repayment or settlement of such recourse loans shall be in accordance with the terms and conditions set forth by CCC when the availability of such recourse loans is announced.

[51 FR 8456, Mar. 11, 1986, and 51 FR 36905, Oct. 16, 1986]

§ 1421.31 Handling payments and collections not exceeding $ 9.99.

In order to avoid administrative costs of making small payments and handling small accounts, amounts of $ 9.99 or less which are due the producer will be paid only upon the producer's request. Deficiencies of $ 9.99 or less, including interest, may be disregarded unless demand for payment is made by CCC.

[44 FR 2354, Jan. 11, 1979, as amended at 49 FR 50168, Dec. 27, 1984. Redesignated at 53 FR 20289, June 3, 1988, and 53 FR 47659, Nov. 25, 1988]

§ 1421.32 Paperwork Reduction Act assigned numbers.

The Office of Management and Budget has approved the information collection requirements contained in these regulations in accordance with 44 U.S.C. Chapter 35 and OMB numbers 0560-0087 and 0560-0040 have been assigned.

[Amdt. 3, 49 FR 46708, Nov. 28, 1984. Redesignated at 53 FR 20289, June 3, 1988, and 53 FR 47659, Nov. 25, 1988]

Subpart—Rice Marketing Certificate Program

AUTHORITY: Sec. 603 of the Food Security Act of 1985; 99 Stat. 1429 (7 U.S.C. 1441-1a).

SOURCE: 51 FR 32298, Sept. 11, 1986 (interim), and 51 FR 46997, Dec. 30, 1986 (final), unless otherwise noted.

§ 1421.320 General provisions.

(a) This subpart sets out the terms and conditions under which the Commodity Credit Corporation (CCC) shall make payments, in the form of commodity certificates, to eligible persons who have entered into a Rice Marketing Certificate Agreement with CCC to participate in the rice marketing certificate program in accordance with § 603 of the Food Security Act of 1985.

(b) If, beginning August 1, 1986, and ending July 31, 1991, CCC determines that the adjusted world price for a class of rice (determined in accordance with 7 CFR Part 26) is below the current loan repayment rate for that class of rice, then CCC, in order to make domestically-produced rice competitive in world markets and to maintain and expand exports of domestically produced rice, shall make payments available to eligible persons in accordance with the provisions of this subpart.

(c) Such payments shall be based upon the quantity of eligible rice which an eligible person has:

(1) Redeemed from a price support loan with cash or;

(2) With respect to eligible rice which has not been and will not be pledged as collateral for a price support loan, sold as evidenced by documentation acceptable to CCC.

§ 1421.321 Eligible persons.

For the purposes of this subpart, the following persons shall be considered to be eligible to enter into a Rice Marketing Certificate Agreement with CCC and to receive payment in accordance with this subpart:

(a) Producers of eligible rice, and

(b) Cooperative Marketing Associations which acquire the eligible rice production of their members and which have been approved (in accordance with 7 CFR Part 1425) to obtain price support from CCC on behalf of their members.

§ 1421.322 Eligible rice.

For the purposes of this subpart, eligible rice is 1986 and subsequent crop rice (Oryza Sativa L.), unmilled and unprocessed, which consists of 50 percent or more of paddy kernels of rice and which is of a class, variety, and grade eligible to be pledged as collateral for price support loan as provided in this Part, and with respect to which a payment in accordance with the provisions of this subpart has not been made available.

[51 FR 32298, Sept. 11, 1986, as amended at 53 FR 20290, June 3, 1988]

§ 1421.323 Rice marketing certificate agreement.

(a) Payments in accordance with this subpart shall be made available to eligible persons who have entered into a Rice Marketing Certificate Agreement with CCC and who have complied with the terms and conditions set forth in this subpart and the Rice Marketing Certificate Agreement.

(b) Rice Marketing Certificate Agreements may be obtained from local county Agricultural Stabilization and Conservation Service offices.

§ 1421.324 Commodity certificates.

Payments in accordance with this subpart shall be made available in the form of commodity certificaters in accordance with 7 CFR Part 770.

§ 1421.325 Payment rate.

The payment rate for the purposes of calculating payments made available in accordance with this subpart shall be based upon the difference between the adjusted world price for the class of rice and the loan repayment rate as specified in the rice Marketing Certificate Agreement.

Subpart—Regulations Governing the Grain Reserve Program for 1982 and Subsequent Crops and Alternative Program for 1981 and Prior Crops

SOURCE: 47 FR 35494, Aug. 16, 1982; 47 FR 36805, Aug. 24, 1982, unless otherwise noted.

§ 1421.740 General statement.

(a) The regulations in this subpart set forth the terms and conditions for the Grain Reserve Program which provides for extended farm storage and warehouse storage loans (hereinafter called "grain reserve loan(s)") with respect to eligible commodities as provided in § 1421.744. Farm storage grain reserve loans will be evidenced by notes, security agreements, grain reserve agreements, and in certain cases chattel mortgages or financing statements. Warehouse storage grain reserve loans will be evidenced by notes, security agreements, and grain reserve agreements and will be secured by the pledge of warehouse receipts representing eligible commodities in approved warehouse storage. As used in the regulations in this subpart, "CCC" means the Commodity Credit Corporation and "ASCS" means the Agricultural Stabilization and Conservation Service of the U.S. Department of Agriculture.

(b) To participate in the Grain Reserve Program, a producer must request and enter into a grain reserve agreement with CCC at the local county ASCS office. Such agreement shall be for a period of time as specified in § 1421.741. Storage payments will be paid to the producer annually during the period of the grain reserve agreement for the time such commodity is eligible to earn such storage payments. Producers may redeem commodities under the Grain Reserve Program without repaying earned storage payments when the national average market price reaches the trigger release level determined in accordance with § 1421.753.

§ 1421.741 Length of reserve agreements.

The length of reserve agreements shall be determined and announced by the Executive Vice President, CCC, based upon market conditions which exist at the time such agreements are executed by CCC. Such agreements may be extended by CCC, at the producer's option, upon maturity if CCC determines that an extension is warranted based upon existing market conditions. 1983 and prior crop year loans may not be extended. 1984 crop year loans which mature on March 31, 1988 through and including December 31, 1988 may be extended for one year. Producers having 1984 and 1985 crop year loans will be notified by mail of any extension or additional extension option which may be made available by CCC. Determinations with respect to the entry of eligible grain from other crop years into the Grain Reserve Program will be announced by CCC by the publication of a final notice of determination in the FEDERAL REGISTER.

[53 FR 34011, Sept. 1, 1988]

§ 1421.742 Reserve quantity.

The maximum quantity of wheat and feed grains stored under the program shall be determined and announced annually by the Executive Vice President, CCC.

[53 FR 11240, Apr. 6, 1988, 53 FR 37702, Sept. 27, 1988]

§ 1421.743 Program availability.

Producers with farm or warehouse-stored grain under CCC price support loan (hereinafter called "regular loan(s)") may participate in the Grain Reserve Program any time a reserve is in effect and is available for their commodity. The program will be available when announced by the Secretary for a specified crop of wheat and feed grains for such period of time and under such terms and conditions as may be deemed to be appropriate by the Secretary. However, entry of eligible commodities into the reserve will not be permitted when the national average market price for such commodity has reached the trigger release level and the reserve is in release as provided for by § 1421.753(a). Producers will be permitted to place an eligible commodity into the reserve when the national average market price for such commodity is again below such release level and the reserve is no longer in release. In addition, entry of eligible commodities into the Grain Reserve Program will not be permitted and such reserve will be terminated whenever the Secretary determines that emergency conditions exist and grain reserve loans have been called in accordance with the provisions of § 1421.753(c). A producer desiring to participate in the Grain Reserve Program shall file a request to participate in the program at the county ASCS office which disbursed the regular loan. An approved cooperative marketing association shall request a grain reserve loan at the county ASCS office which disbursed the regular loan or at its servicing agent bank which disbursed the regular loan.

§ 1421.744 Eligibility requirements.

(a) *Producer.* Whenever the Secretary has announced pursuant to § 1421.743 that the reserve is available for a specified crop of wheat or feed grains, a producer may, upon maturity of a regular loan, place the eligible commodity serving as collateral for such loan into the Grain Reserve Program by making application for and completing a grain reserve agreement. In order to encourage the orderly marketing of wheat and feed grains, the Secretary may authorize producers with eligible commodities to participate in an announced Grain Reserve Program prior to maturity of their regular loans with respect to a specified crop of wheat or feed grains. In such event, producers with eligible commodities under purchase agreements may also be eligible to participate in such grain reserve upon conversion of their purchase agreements into regular loan agreements. The eligibility of producers to place eligible commodities into the reserve will be on a first-come-first-served basis.

(b) *Commodities.* Wheat or feed grains serving as collateral for grain reserve loans must meet the quantity and quality requirements set forth in § 1421.747 and § 1421.748 of this subpart.

§ 1421.745 Applicability of the general regulations governing price support for the 1986 and subsequent crops.

The provisions of the General Regulations Governing Price Support for the 1987 and Subsequent Crops, published at 44 FR 2353, and corrected at 44 FR 6351, and any amendments thereto (hereinafter referred to as "General Regulations"), which are not inconsistent with provisions of this subpart, shall also be applicable to grain reserve loans entered into in accordance with the terms and conditions of this subpart.

[47 FR 35494, Aug. 16, 1982; 47 FR 36805, Aug. 24, 1982, as amended at 50 FR 42510, Oct. 21, 1985; 51 FR 8455, Mar. 11, 1986; 51 FR 36905, Oct. 16, 1986; 53 FR 6132, Mar. 1, 1988]

§ 1421.746 Warehouse receipts.

(a) *General.* Warehouse receipts tendered to CCC under this Grain Reserve Program must meet all of the requirements of this section and any other requirements contained in this subpart, the general regulations, and the regulations governing the loan and purchase program for the applicable commodity.

(b) *Manner of issuance and endorsement.* Warehouse receipts must be issued in the name of the eligible producer or CCC. If issued in the name of the eligible producer, the receipts must be properly endorsed in blank so as to vest title in the holder of such receipts.

(c) *Requirements.* Warehouse receipts must: (1) Be issued by an approved warehouse; (2) represent a commodity which is deemed to be stored commingled; (3) be negotiable; (4) cover the eligible commodity actually in storage in the warehouse of original deposit, except that warehouse receipts may be issued by another warehouse if the eligible commodity was reconcentrated under a "Reconcentration Agreement and Trust Receipt" approved by CCC; (5) be registered or recorded with appropriate State or local officials when required by State law; and (6) show that storage charges have been paid through the end of the first year of the grain reserve agreement. In lieu of the latter requirement with respect to storage charges, the producer may provide evidence satisfactory to CCC that storage charges have been paid or have otherwise been provided for through the end of the first year of the grain reserve agreement.

(d) *Where a warehouseman is also owner.* If the warehouse receipt is issued for a commodity which is owned by the warehouseman, either solely, jointly, or in common with others, the fact of such ownership shall be stated on the receipt. In States where the pledge of warehouse receipts issued by warehousemen on their own commodity is invalid, the warehousemen may offer such commodity to CCC for loan only if such warehouse is licensed and operating under the U.S. Warehouse Act.

§ 1421.747 Quantity eligible for grain reserve loans.

(a) *Farm-stored.* The quantity eligible for a grain reserve loan is the measured quantity covered by the regular loan, as determined by the county committee.

(b) *Warehouse-stored.* The quantity eligible for a grain reserve loan is the quantity shown on the warehouse receipt or the supplemental certificate, if applicable, which secured the regular loan.

§ 1421.748 Quality eligibility requirements of reserve grain loans.

(a) *General.* Quality will be determined according to the Official United States Standards for Grain, Federal Grain Inspection Service (FGIS), U.S. Department of Agriculture.

(b) *Wheat.* Wheat which enters the reserve must meet the quality eligibility requirements for securing a regular CCC price support loan and, in addition, may not be "Sample Grade."

(c) *Feed grains.* Feed grains which enter the reserve must meet the quality eligibility requirements for securing a regular CCC price support loan. However, feed grains which grade "Sample Grade" will not be eligible to enter the reserve.

(d) *Farm-stored grain.* (1) Prior to approval of a grain reserve farm-stored loan, the commodity will be inspected by a representative of the county committee and the agreement will not be approved unless it is determined on the basis of such inspection that: (i) The commodity is such that it can reasonably be expected to be stored with safety until maturity of the loan; and (ii) the commodity meets the quality eligibility requirements in accordance with the provisions of paragraphs (b) and (c) of this section. If the loan inspector questions the eligibility of the commodity, a sample shall be drawn and submitted to FGIS for quality analysis.

(2) The producer is responsible for maintaining the quality and quantity of the farm-stored grain. Farm-stored grain which is delivered to CCC must meet the quality eligibility requirements specified in paragraphs (b) and (c) of this section. CCC may reject the delivery of farm-stored grain which does not meet the quality eligibility requirements, in which case the producer shall repay to CCC the loan principal with interest, plus unearned storage payments. If CCC accepts the delivery of the ineligible commodity, the producer shall repay to CCC the loan principal with interest, plus unearned storage payments, less the settlement value of the commodity as determined in accordance with the settlement procedures set forth in 7 CFR 1421.22.

[47 FR 35494, Aug. 16, 1982; 47 FR 36805, Aug. 24, 1982, as amended at 48 FR 51767, Nov. 14, 1983]

§ 1421.749 Storage rates.

(a) Producers will be paid per annum storage payments at the initial rate of 26.5 cents per bushel for wheat, barley, and corn; 20 cents per bushel for oats; and 47.32 cents per hundredweight for sorghum. These rates may be changed from time to time by an announcement by the Secretary and any new agreements would reflect such changes.

(b) When storage is computed for less than one year, appropriate daily rates will be used, which will not be less than:

(1) .0726 cents per bushel for wheat, barley and corn;

(2) .1296 cents per hundredweight for sorghum; and

(3) .0548 cents per bushel for oats.

Annual storage payments shall be adjusted and paid in accordance with the provisions set forth in § 1421.750.

§ 1421.750 Storage payments.

(a) *Time.* Advance storage payments shall be paid annually on the date the grain reserve agreement is approved and each anniversary date thereafter. However, storage payments will not be made when storage credit is not being earned as provided for in § 1421.750 (d) if the national average market price is at or above the trigger release level. If CCC subsequently determines that the price has fallen below the applicable trigger release level, storage payments will be made for the remainder of the year. Storage payments for the second year and any subsequent year will not be made to a producer having a grain reserve warehouse loan until the producer furnishes written evidence to CCC that at least the next year's storage payment has been paid to the warehouseman or arrangements for such storage payment have been made with the warehouseman. If the producer fails to provide such written evidence within a reasonable time, the county ASCS office shall call such loans. If, within 10 days after the date the loan is called, the loan is not repaid or evidence is not furnished to CCC that storage has been paid or that arrangements for such storage have been made, title to the commodity shall vest in CCC on the eleventh day and the producer shall be considered to have voluntarily forfeited his commodity to CCC and shall be subject to the voluntary forfeiture provisions of § 1421.753(b).

(b) *Storage payment units.* Storage payments for farm-stored grain reserve loans shall generally be based upon the quantity of such commodity serving as collateral for a regular loan which is converted to a loan under the Grain Reserve Program. However, such payments can be based on the quantity of such commodity measured for a grain reserve loan when such measured quantity is greater than the quantity of such commodity serving as collateral for the regular loan.

(c) *Storage credit.* Storage credit for less than one year will be computed on a daily basis.

(d) *Eligible storage credit.* Storage credit shall be allowed for the duration of the loan, except that no storage credit shall be earned between the day following the second consecutive CCC announcement that the national average market price for the commodity is equal to or exceeds the trigger release level and the date of any subsequent announcement by CCC that the market price is again below the trigger release level for such commodity. Any unearned advance storage payments will be subtracted from any future storage payments or will be collected when the loan collateral is redeemed by the producer or forfeited to CCC.

(e) *Unearned storage credit.* No storage payment shall be earned if the producer:

(1) Has made any false representation in the loan documents in obtaining the loan or in settlement of the loan;

(2) Makes an unauthorized disposition of the commodity with intent to defraud CCC;

(3) Abandons the commodity; or

(4) Negligently or otherwise impairs the commodity.

(f) Notwithstanding paragraph (a) of this part or any other provision of this part, producers who extend for six months 1985-crop corn and grain sorghum grain reserve loans, which mature on or after August 31, 1989, shall receive storage payments earned as a result of this extension at the time the loan is settled by the producer through forfeiture of the loan collateral, the repayment of the loan or at the time the loan is further extended by CCC if further extensions are authorized by CCC.

[47 FR 35494, Aug. 16, 1982; 47 FR 36805, Aug. 24, 1982, as amended at 55 FR 1571, Jan. 17, 1990]

§ 1421.751 Interest rates.

(a) As provided in the Note and Security Agreement signed by the producer, each grain reserve loan shall bear interest during the first year at the rate applicable to such Note and Security Agreement as well as any subsequent increased or decreased rate of interest which may be determined and announced by the Secretary.

(b) Except as provided in this subsection, grain reserve loans shall not bear interest after the first year. However, notwithstanding any period during which interest may otherwise be waived, interest will be charged for any period beginning the day following the second consecutive CCC announcement that the national average market price for the commodity is equal to or exceeds the trigger release level for such commodity and ending the date of any subsequent announcement by CCC that the market price for the commodity is again below the trigger release level for such commodity. Such interest will accrue at the rate applicable to CCC price support loans when interest resumes.

§ 1421.752 Commingling and replacement of loan collateral.

(a) *Commingling.* In the case of farm storage, grain in the grain reserve may be commingled with other eligible or ineligible grain which is from the same or any other crop year and which is of the same class if:

(1) The county Agricultural Stabilization and Conservation (ASC) committee gives prior written approval of such commingling, and

(2) The county ASCS office inspects and measures the grain at the producer's expense prior to commingling.

(b) *Replacement of loan collateral.* (1) A producer may replace existing Grain Reserve Program farm-stored loan collateral only as provided in this paragraph and paragraph (c) of this section. Warehouse-stored loan collateral may not be replaced. A request for approval to replace farm-stored collateral must be made by completion of Form CCC-687-1 or CCC-681 and the filing of the form with the county ASCS office which disbursed the loan. No request may be approved prior to the date established for each county by the State committee. Replacement stocks must be in place within 60 days of the date the requests to rotate is approved by the county committee.

(2) Grain which is used to replace existing loan collateral must have been produced by the producer and be eligible to be pledged as collateral for a regular price support loan. Replacement loan collateral must be grain from the crop which is harvested after the date established in accordance with paragraph (b)(1) of this section. This grain must not have been purchased and must previously not have been pledged as collateral for a CCC price support loan. With respect to wheat, such replacement stocks must be of the same class as the original loan collateral.

(3) Producers who request to replace existing Grain Reserve Program loan collateral with new stocks must have the replacement stocks in CCC-approved farm storage within the approved 60 day period. A producer may only have replacement stocks in place after this date if the producer notifies the county ASC committee prior to this date of the producer's inability to harvest such stocks and the county committee, with the concurrence of a representative of the State committee, determines that:

(i) The producer has made a good faith effort to harvest such replacement grain; and

(ii) The producer is unable to harvest such eligible grain due to adverse weather conditions, or other similar conditions beyond the control of the producer, as determined by CCC.

(4) A producer who does not have replacement stocks in place by the date specified in paragraph (b)(3) of this

section and does not meet the conditions specified in such paragraph shall pay to CCC an amount equal to the sum of:

(i) The principal of the loan plus interest at the rate in effect on the date of the failure to have such stocks in place, as provided in accordance with part 1405 of this chapter, determined from the date of the disbursement of the loan through the date the stocks were required to be in place;

(ii) Storage payments made in accordance with the loan plus interest from the date payments were made in the manner specified in paragraph (b)(4)(i) of this section; and

(iii) Liquidated damages at the rate of 50 percent of the interest rate in the manner specified in paragraph (b)(4)(i) of this section from the date the loan was disbursed.

(c) *Procedure for replacement.* (1) A producer who files a Form CCC-687-1 or CCC-681 requesting the approval to replace existing loan collateral with new stocks may after approval of the request:

(i) Feed the grain to the producer's own livestock;

(ii) Deliver the grain to a CCC-approved warehouse; or

(iii) Sell the grain.

(2) A producer who delivers grain to a CCC-approved warehouse in accordance with paragraph (c)(1) of this section shall cause to be delivered to CCC a warehouse receipt issued in the name of CCC with respect to such grain. The warehouse receipt shall show that storage charges have been paid or otherwise provided for through the final date specified to complete the rotation. CCC shall retain control of the receipt until the producer has replaced the original loan collateral with eligible replacement stocks. Except as provided in paragraph (b)(3) of this section, if the producer fails to replace the rotated stocks within the approved rotation period CCC shall retain title to the warehouse receipt and shall determine the value of the grain represented by the receipt. This value shall be credited to the amount owed by the producer as determined in accordance with paragraph (b)(4) of this section.

(3) A producer who in accordance with paragraph (c)(1) of this section, sells the grain which is the collateral for the CCC grain reserve loan shall only sell such grain to the person specified in the Form CCC-681. The purchaser shall make and remit to CCC a check for the full amount of the purchase. CCC shall make these funds available to the producer upon the replacement of the original loan collateral with eligible replacement stocks if such replacement occurs prior to the final date of the approved rotation period. Except as provided in paragraph (b)(3) of this section, if the producer has not acquired eligible replacement stocks by this date, the producer shall forfeit the sales proceeds to CCC. This amount shall be credited to the amount owed by the producer as determined in accordance with paragraph (b)(4) of this section.

(4) A producer who intends to feed such grain to the producer's own livestock, may only feed the quantity of grain which was approved by the county committee for such purposes.

(5) Any producer who files a Form CCC-687-1 or CCC-681 with the county committee shall not remove the existing loan collateral until written approval has been made by the county committee. The producer shall allow a representative of the county committee to inspect and measure, at the producer's expense, the quantity of grain to be removed and the growing crop which will be used as replacement stocks upon harvest.

(d) *Release for sale or livestock feed.* A producer shall be permitted to move farm-stored grain in the Grain Reserve Program for delivery to a buyer for sale or for use as livestock feed if, prior to the movement of the grain, the following conditions are met: (1) A written request to do so is filed in the county ASCS office; (2) approval of the county ASC committee is granted in writing; (3) a representative of the county ASC committee inspects and measures the grain, at the producer's expense, prior to removal; (4) if the grain is released for livestock feed, such grain will be fed to the producer's own livestock; and, if applicable, (5) an inspection of the unharvested grain, which is made at the producer's expense, indicates that there will be sufficient eligible unencumbered production of the commodity of equal or better quality to replace the grain previously placed in the Grain Reserve Program. Any grain which is removed from the Grain Reserve Program must be replaced within 30 days, or within such other period as may be determined and announced by the Secretary, with an equivalent quantity and quality of grain of the same type which:

(i) The producer has previously harvested;

(ii) Is from the producer's new crop; or

(iii) Is purchased by the producer.

[47 FR 35494, Aug. 16, 1982; 47 FR 36805, Aug. 24, 1982, as amended at 51 FR 21730, June 16, 1986; 55 FR 7691, Mar. 5, 1990]

§ 1421.753 Trigger release level, redemption requirements, early redemption charges, and emergency call.

(a) *Trigger release level.* Commodities serving as collateral for grain reserve loans shall not be eligible for redemption without the producer incurring liability for liquidated damages unless the national average market price of the commodity as determined and announced by CCC is equal to or above the trigger release level established for such commodity. Trigger release levels will be the higher of 140 percent of the nonrecourse loan rate for the commodity or the established targeted price for such commodity. Such determinations shall be made and announced by CCC and shall be applicable until a subsequent announcement is made. When the trigger release level is reached for a commodity, the initial release period shall be for the remainder of the month in which release is announced plus the next month. Subsequent announcements to continue or discontinue release will be made at the end of the initial or subsequent release period. Any subsequent announcement to continue release will be for the month following the preceding release period. If a subsequent announcement indicates that the national average market price for the commodity is below the applicable trigger release level, the terms o the reserve agreement and the regulations which are applicable prior to release shall again apply and the commodity will not be eligible for redemption without liability for liquidated damages and other applicable charges

(b) *Redemption or voluntary forfeiture.* (1) Except, in case of emergency release as provided in paragraph (b)(2 hereof, if a producer redeems the commodity when the national average market price for such commodity is below the applicable trigger release level, such producer will be required to repay the grain reserve loan pricipal with interest. In addition, such producer will be required to repay with interest storage payments previously received by the producer with respect to such commodity for the period during which liquidated damages apply, as specified below. The producer is further liable for liquidated damages at the rate of 50 percent of the interest rate applicable to CCC regular loans at the time of redemption. Liquidated damages will be assessed for the period beginning on the later of: (i) The date following the last date the producer had an opportunity to repay the loan during a release period; or (ii) the date the reserve agreement was approved (in the case of converted reserve agreements, the date the original reserve agreement was approved). The period during which such liquidated damages will be assessed will end on the date of repayment. If a producer voluntarily forfeits the commodity to CCC prior to the time of any announcement that the applicable trigger release level has been reached, such producer shall be required to repay with interest all storage payments previously received by the producer with respect to such commodity for the period during which liquidated damages apply. In addition, the producer will be liable for liquidated damages at a rate equal to 50 percent of the interest rate applicable to CCC price support loans at the time of forefeiture. Liquidated damages will be assessed for the time period prescribed above.

(2) In the case of warehouse-stored loans, if it is determined by CCC that the storage space is no longer avail-

able, the producer may repay the loan or forfeit the commodity to CCC without incurring liability for liquidated damages and may retain earned storage payments. In the case of farm-stored loans, the producer may repay the loan or forfeit the commodity to CCC without incurring liability for liquidated damages and may retain earned storage payments if it is determined by CCC that there is insect infestation which cannot be controlled, the commodity is subject to damage by flood or fire, there is damage to the storage structure, the producer has lost control of the storage structure, or the commodity is going out of condition.

(c) *Emergency call.* Notwithstanding any other provision of this rule, the Secretary may require producers to repay grain reserve loans prior to the maturity date of such loans if the Secretary detemines that emergency conditions exist which require that the commodity which is serving as collateral for the loan be made available in the market to meet urgent domestic or international needs and such determination and the reasons therefore are reported to the President, the Committee on Agriculture, Nutrition, and Forestry of the Senate, and the committee on Agriculture of the House of Representatives at least fourteen days before taking such action. Repayment shall consist of loan principal and interest, plus unearned storage. If the called loan is not redeemed within the time prescribed by the Secretary, CCC may take title to the commodity.

[47 FR 35494, Aug. 16, 1982, as amended at 52 FR 30658, Aug. 17, 1987; 53 FR 11240, Apr. 6, 1988, 53 FR 37702, Sept. 27, 1988]

§ 1421.754 Maturity.

Grain reserve loans mature and are due and payable on the last day of the 36th calendar month after the maturity date of the regular loan agreement or the expiration date of the purchase agreement. However, notwithstanding the foregoing, when the grain reserve loan is an extension of an unmatured regular loan, the grain reserve loan matures and is due and payable on the last day of the 36th month following the month in which the grain reserve agreement is approved.

[47 FR 35494, Aug. 16, 1982, as amended at 52 FR 30658, Aug. 17, 1987]

§ 1421.755 Paperwork Reduction Act assigned numbers.

The Office of Management and Budget has approved the information collection requirements contained in these regulations in accordance with 44 U.S.C. Chapter 35 and OMB Number 0560-0087 has been assigned.

[48 FR 51768, Nov. 14, 1983]

§ 1421.756 Special rules for 1988 marketing years.

(a) *Release.* Once the release price for a commodity is attained during the 1988 marketing year, producers may repay a loan made in accordance with this subpart at anytime during the remainder of such year without the payment of any penalty, regardless of the then current market price. This section shall not affect in any way the manner in which storage payments and the accrual of interest are determined.

(b) *Certificate exchanges.* During the 1988 marketing year, producers may acquire commodities substituted for commodities originally pledged as collateral for FOR loans made in accordance with this subpart if the substituted commodities have been pledged as a collateral and redeemed within the same county.

[53 FR 37702, Sept. 27, 1988]

Subpart—Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed

SOURCE: 44 FR 67078, Nov. 23, 1979, unless otherwise noted.

§ 1421.5551 General statement and administration.

(a) This subpart prescribes the requirements which must be met and the procedures which must be followed by a warehouseman in the United States or Puerto Rico who desires the initial or continuing approval by the Commodity Credit Corporation (hereinafter referred to as "CCC") of warehouse(s) for the storage and handling of:

(1) Wheat, oats, corn, rye, barley, sorghums, flaxseed, and soybeans under a Uniform Grain Storage Agreement (which commodities hereinafter referred to as "grain"),

(2) Rough rice under a Uniform Rice Storage Agreement,

(3) Milled rice under a Milled Rice Storage Agreement,

(4) Dry Edible Beans under a Bean Storage Agreement, and

(5) Seed under a Seed Storage Agreement, which are owned by CCC or held by CCC as security for price support loans.

This subpart is not applicable to grain, rough and milled rice, dry edible beans, and seed purchased in store for prompt shipment or to handling operations of a temporary nature.

(b) Copies of the CCC storage agreement and forms required for obtaining approval under this subpart may be obtained from the Kansas City Commodity Office, U.S. Department of Agriculture, P.O. Box 205, Kansas City, Missouri 64141 (hereinafter referred to as the "KCCO").

(c) A warehouse must be approved by KCCO and a storage contract or agreement must be in effect between CCC and the warehouseman before CCC will use such warehouse. The approval of a warehouse or the entering into of a storage contract or agreement does not constitute a commitment that CCC will use the warehouse, and no official or employee of the U.S. Department of Agriculture is authorized to make any such commitment.

(d) A warehouseman, when applying for approval under this subpart, shall submit to CCC at KCCO:

(1) A completed Form CCC-24, "Application for Approval of Warehouse for Grain, Rice, Dry Edible Beans, and Seed", and a completed Form CCC-24-1, "Supplement to Application for Approval of Warehouse for Grain, Rice, Dry Edible Beans, and Seed".

(2) A current financial statement prepared in accordance with generally accepted accounting principles meeting the following requirements:

(i) Each financial statement shall include, but not be limited to the following:

(A) A balance sheet;

(B) A statement of income (profit and loss);

(C) Statement of retained earnings; and

(D) A statement of changes in the financial position.

(ii) Each financial statement shall be accompanied by one of the following:

(A) A report of audit or review conducted by an independent CPA or an independent public accountant in accordance with standards established by the American Institute of Certified Public Accountants. The accountant's report of audit or review shall include the accountant's certifications, assurances, opinions, comments, and notes with respect to such financial statement, or

(B) A compilation report of the financial statement which is prepared by a grain commission firm or a management firm if such firm has been authorized by the Deputy Vice President, CCC (Deputy Administrator, Commodity Operations, ASCS) to provide a compilation report of financial statements of warehousemen.

(iii) All financial statements shall be accompanied by a certification by the chief executive officer of the warehouseman, under penalty of perjury, that the financial statement(s) accurately reflects the financial condition of the warehouseman for the period specified in such statement.

(iv) A current financial statement on Form WA-51-2, "Financial Statement", supported by such supplemental schedules as CCC may request. Financial statements may be submitted on forms other than Form WA-51-2 with approval of the Director, KCCO, or the Director's designee.

(v) Only one financial statement is required for a chain of warehouses owned or operated by a single business entity. If approved by the Director, KCCO, or the Director's designee, the financial statement of a parent company, which includes the financial position of a wholly-owned subsidiary, may be used to meet the CCC standards for approval for the wholly-owned subsidiary.

(3) Evidence that the warehouseman is licensed by the appropriate licensing authority as required under § 1421.5552(a)(2) and such other docu-

ments or information as CCC may require.

(e) The provisions of paragraph (d)(2) of this section shall also be applicable to warehousemen who have an existing storage contract with CCC. Such warehousemen with existing storage contracts shall submit their financial statements to CCC in the manner prescribed reflecting their financial condition as of the close of the warehouseman's fiscal or calendar year's operation, whichever is applicable. Thereafter, the financial statements and the audit, review or compilation reports shall be furnished annually to reflect the warehouseman's fiscal or calendar year's operation, whichever is applicable, and at such other times as may be required by the AMS or CCC.

[44 FR 67078, Nov. 23, 1979, as amended at 47 FR 22502, May 25, 1982; Amdt. 4, 50 FR 29640, July 22, 1985]

§ 1421.5552 Basic standards.

Unless otherwise provided in this subpart, each warehouseman and each of the warehouses owned or operated by such warehouseman for which CCC approval is sought for the storage or handling of CCC owned or loan commodities shall meet the following standards:

(a) The warehouseman shall:

(1) Be an individual, partnership, corporation, association, or other legal entity engaged in the business of storing or handling for hire, or both, the applicable commodity. The warehouseman, if a corporation, shall be authorized by its charter to engage in such business.

(2) Have a current and valid license for the kind of storage operation for which the warehouseman seeks approval if such a license is required by State or local laws or regulations.

(3) Have a net worth which is the greater of $50,000 or an amount which is computed by multiplying the maximum storage capacity of the warehouse (the total quantity of the commodity which the warehouseman desires to store and which the warehouse can accommodate when stored in the customary manner) under the approved contract with CCC times twenty-five (25) cents per bushel in the case of grain, fifty (50) cents per hundredweight in the case of rough rice, eighty-five (85) cents per hundredweight in the case of milled rice, and sixty (60) cents per hundredweight in the case of dry edible beans. In the case of seed, the net worth of the warehouseman shall be at least equal to an amount which is computed by multiplying the estimated number of pounds of seed to be stored times seven (7) cents per pound. If this calculated net worth requirement exceeds $50,000, the warehouseman may satisfy any deficiency in net worth between the $50,000 minimum requirement and such calculated net worth requirement by furnishing bonds, irrevocable letters of credit, or other acceptable substitute security meeting the requirements of § 1421.5553.

(4) Have available sufficient funds to meet ordinary operating expenses.

(5) Have satisfactorily corrected upon request by CCC, any deficiencies in the performance of any storage contract or agreement with CCC.

(6) Maintain accurate and complete inventory and operating records.

(7) Use only prenumbered warehouse receipts and scale tickets.

(8) Have available at the warehouse adequate and operable firefighting equipment for the type of warehouse and applicable stored commodity, and

(9) Have a work force and equipment available to complete load out within sixty (60) working days of that quantity of grain, rice, beans, or seed for which the warehouse is or may be approved under the Uniform Grain Storage Agreement, Uniform Rice Storage Agreement, Milled Rice Storage Agreement, Bean Storage Agreement, or Seed Storage Agreement. Notwithstanding the provisions of this paragraph, the load out capacity of any warehouse at a single location need not exceed the equivalent of 200 railroad cars per day.

(b) The warehouseman, officials, or supervisory employees of the warehouseman in charge of the warehouse operations shall have the necessary experience, organization, technical qualifications, and skills in the warehousing business regarding the applicable commodities to enable them to provide proper storage and handling services.

(c) Warehouseman, officials, and each of the supervisory employees of the warehouseman in charge of the warehouse operations shall:

(1) Have a satisfactory record of integrity, judgment, and performance, and

(2) Be neither suspended nor debarred under applicable CCC suspension and debarment regulations.

(d) The warehouse shall:

(1) Be of sound construction, in good state of repair, and adequately equipped to receive, handle, store, preserve, and deliver the applicable commodity,

(2) Be under the control of the contracting warehouseman at all times, and

(3) Not be subject to greater than normal risk of fire, flood, or other hazards.

[44 FR 67078, Nov. 23, 1979, as amended by Amdt. 4, 50 FR 29640, July 22, 1985; 51 FR 32627, Sept. 15, 1986; 55 FR 11572, Mar. 29, 1990]

§ 1421.5553 Bonding requirements for net worth.

A bond furnished by a warehouseman under this subpart must meet the following requirements:

(a) Such bond shall be executed by a surety which:

(1) Has been approved by the U.S. Treasury Department, and

(2) Maintains an officer or representative authorized to accept service of legal process in the State where the warehouse is located.

(b) Such bond shall be on Form CCC-33, "Warehouseman's Bond", except that a bond furnished under State law (statutory bond) or under operational rules of nongovernmental supervisory agencies may be accepted in an equivalent amount as a substitute for a bond running directly to CCC if:

(1) CCC determines that such bond provides adequate protection to CCC,

(2) It has been executed by a surety specified in paragraph (a) of this section or has a blanket rider and endorsement executed by such a surety with the liability of the surety under such rider or endorsement being the same as that of the surety under the original bond, and

(3) It is noncancellable for not less than ninety (90) days or includes a rider providing for not less than ninety (90) days' notice to CCC before cancellation. Excess coverage on a substitute bond for one warehouse will not be accepted or applied by CCC against insufficient bond coverage on other warehouses.

(c) Cash and negotiable securities offered by a warehouseman may be accepted by CCC in lieu of the equivalent amount of required bond coverage. Any such cash or negotiable securities accepted by CCC will be returned to the warehouseman when the period for which coverage was required has ended and there appears to CCC to be no liability under the storage contract or agreement.

(d) A legal liability insurance policy may be accepted by CCC in lieu of the required amount of bond coverage provided such policy contains a clause or rider making the policy payable to CCC, CCC determines that it affords protection equivalent to a bond, and the Office of the General Counsel, U.S. Department of Agriculture, approves it for legal sufficiency.

(e) An irrevocable letter of credit may be accepted by CCC in lieu of the required amount of bond coverage provided that the issuing bank is a commercial bank insured by the Federal Deposit Insurance Corporation. Such standby letter of credit shall be on Form CCC-33A, "Irrevocable Letter of Credit", or on such other form as may be specifically approved by the Director, KCCO, or the Director's designee.

[44 FR 67078, Nov. 23, 1979, as amended by Amdt. 4, 50 FR 29640, July 22, 1985]

§ 1421.5554 Examination of warehouses.

Except as otherwise provided in this subpart, a warehouse must be examined by a person designated by CCC before it may be approved by CCC for the storage or handling of commodities and periodically thereafter to determine its compliance with CCC's standards and requirements.

§ 1421.5555 Exceptions.

Notwithstanding any other provisions of this subpart:

(a) The financial, bond, and original and periodic warehouse examination provisions of this subpart do not apply to any warehouseman approved or applying for approval for the storage and handling of commodities under CCC programs if the warehouse is licensed under the U.S. Warehouse Act for such commodities but a special examination shall be made of such warehouse whenever CCC determines such action is necessary.

(b) A warehouseman who has a net worth of at least $50,000 but who fails or whose warehouse fails to meet one or more of the other standards of this subpart may be approved if:

(1) CCC determines that the warehouse services are needed and the warehouse storage and handling conditions provide satisfactory protection for the commodity, and

(2) The warehouseman furnishes such additional bond coverage (or cash or acceptable negotiable securities or legal liability insurance policy) as may be prescribed by CCC.

[44 FR 67078, Nov. 23, 1979, as amended at 51 FR 32627, Sept. 15, 1986]

§ 1421.5556 Approval of warehouses, requests for reconsideration.

(a) CCC will approve a warehouse if it determines that the warehouse meets the standards set forth in this subpart. CCC will send a notice of approval to the warehouseman. Approval under this subpart, however, does not relieve the warehouseman of the responsibility for performing the warehouseman's obligations under any agreement with CCC or any other agency of the United States.

(b) Except as otherwise provided in this subpart:

(1) CCC will not approve the warehouse if CCC determines that the warehouse does not meet the standards set forth in this subpart, and

(2) CCC will send any notice of rejection of approval to the warehouseman. The notice will state the cause(s) for such action. Unless the warehouseman or any officials or supervisory employees of the warehouseman are suspended or debarred, CCC will approve the warehouse if the warehouseman establishes that the causes for CCC's rejection of approval have been remedied.

(c) If rejection of approval by CCC is due to the warehouseman's failure to meet the standards set forth:

(1) In § 1421.5552, other than the standard set forth in paragraph (c)(2) thereof, the warehouseman may, at any time after receiving notice of such action, request reconsideration of the action and present to the Director, KCCO, in writing, information in support of such request. The Director shall consider such information in making a determination and notify the warehouseman in writing of such determination. The warehouseman may, if dissatisfied with the Director's determination, obtain a review of the determination and an informal hearing thereon by filing an appeal with the Deputy Administrator, Commodity Operations, Agricultural Stabilization and Conservation Service (hereinafter referred to as "ASCS"). The time of filing appeals, forms for requesting an appeal, nature of the informal hearing, determination and reopening of the hearing shall be as prescribed in the ASCS regulations governing appeals, 7 CFR Part 780. When appealing under such regulations, the warehouseman shall be considered as a "participant"; and

(2) In § 1421.5552(c)(2), the warehouseman's administrative appeal rights with respect to suspension and debarment shall be in accordance with applicable CCC regulations. After expiration of a period of suspension or debarment, a warehouseman may, at any time, apply for approval under this subpart.

[Amdt. 4, 50 FR 29640, July 22, 1985]

§ 1421.5557 Exemption from requirements.

If warehousing services in any area cannot be secured under the provisions of the subpart and no reasonable and economic alternative is available for securing such services for commodities under CCC programs, the President or Executive Vice President, CCC, may temporarily exempt, in writing, applicants for storage agree-

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ments and warehousemen who are currently under contract with CCC in such area from one or more of the standards of this subpart and may establish such other standards as are considered necessary to satisfactorily safeguard the interests of CCC.

[53 FR 8746, Mar. 17, 1988]

§ 1421.5558 Contract and application and inspection fees.

(a) Each warehouseman who has a non-Federally licensed grain or rice warehouse in States that do not have a Cooperative Agreement with CCC for warehouse examinations must pay an annual contract fee to CCC for each such warehouse which is approved by CCC or for which CCC approval is sought as follows:

(1) A warehouseman who has an existing agreement with CCC for the storage or handling of CCC-owned commodities or commodities pledged to CCC as loan collateral must pay an annual contract fee for each warehouse approved under that agreement in advance of the renewal date of such agreement.

(2) All grain and rice warehousemen who do not have an existing agreement with CCC for the storage and handling of CCC-owned commodities or commodities pledged to CCC as loan collateral but who desire such an agreement must pay an application and inspection fee for each warehouse for which CCC approval is sought prior to CCC conducting the original warehouse examination. The annual contract fee must be paid by the warehouseman to CCC prior to the time that the agreement is entered into.

(3) The contract fee will be prorated based upon the total number of months for which the contract is to be effective.

(4) CCC may, upon the request of a warehouseman, conduct an examination of a warehouse for the sole benefit of the warehouseman and such warehouseman shall pay to CCC a fee equal to 1½ times the amount of the warehouseman's annual contract fee for such examination.

(b) Any subsequent changes in the contract and application fees shall be announced in the Federal Register.

[Amdt. 4, 50 FR 29641, July 22, 1985, as amended at 51 FR 32627, Sept. 15, 1986; 53 FR 10062, Mar. 29, 1988]

§ 1421.5559 OMB control numbers assigned pursuant to Paperwork Reduction Act.

The information collection requirements contained in this regulation (7 CFR Part 1421) have been approved by the Office of Management and Budget under provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Numbers 0560-0009 and 0560-0036.

[Amdt. 4, 50 FR 29641, July 22, 1985]

PART 1422—PEANUTS

Subpart—Standards for Approval of Cold Storage Warehouses for Peanuts

Sec.
1422.1 General statement and administration.
1422.2 Standards for warehousemen and warehouses.
1422.3 Financial statement.
1422.4 Bonding requirements.
1422.5 Inspection of warehouses.
1422.6 Exceptions.
1422.7 Basis for approval or disapproval.
1422.8 Other conditions for disapproval.
1422.9 Approval of warehouse and duration of approval.
1422.10 Waiver of requirements.

Authority: Sec. 4, 62 Stat. 1070, as amended; (15 U.S.C. 714b).

Subpart—Standards for Approval of Cold Storage Warehouses for Peanuts

Source: 32 FR 20767, Dec. 23, 1967, unless otherwise noted.

§ 1422.1 General statement and administration.

(a) This subpart prescribes the procedure to be followed by warehousemen who desire the Commodity Credit Corporation (hereinafter referred to as "CCC") to approve their cold storage warehouses for the storage and handling, under contract with CCC, of shelled peanuts which are owned by CCC or held by CCC as security for price support loans and which require refrigerated storage. It also prescribes the requirements of CCC for approval of such warehouses. Warehousemen desiring to secure approval of their warehouses under this subpart may obtain information and the necessary application and other forms from (1) the Producer Associations Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, Washington, DC 20250, or (2) the following associations, each of which, under contract with CCC, performs certain functions in connection with CCC's inventory of peanuts: GFA Peanut Association, Camilla, Ga. (Southeastern Area); Southwestern Peanut Growers Association, Gorman, Tex. (Southwestern Area); and Peanut Growers Cooperative Marketing Association, Franklin, Va. (Virginia-Carolina Area). Warehousemen shall submit all forms, statements, and other information required by this subpart to be furnished to CCC to the association in the area where the warehouse is located.

(b) Although a warehouse must be approved by CCC before it will be used for the storage and handling of peanuts, such approval, or the execution of a storage contract with the warehouseman, does not constitute a commitment that the warehouse will be used by CCC and no official or employee of CCC or any association named in this section is authorized to make any such commitment.

§ 1422.2 Standards for warehousemen and warehouses.

Initial approval of a warehouse by CCC, and its continued approval of an approved warehouse, are conditioned upon conformance with the following standards.

(a) The warehouseman shall, except as provided in § 1422.6:

(1) Be an individual, partnership, or an existing legal entity engaging in the business of storing for hire and, if organized in the corporate form, have charter authority to engage in such business.

(2) Have sufficient experience in, and knowledge of, the warehousing business to enable him to give adequate protection and services with respect to the peanuts to be stored.

(3) Have satisfactorily complied with all previous contracts with CCC and instructions issued thereunder: *Provided, however,* That this provision shall apply only in circumstances excepted from CCC regulations governing suspension and debarment (31 FR 4950), and any amendments thereto, unless suspension or debarment action has been taken as provided in such regulations.

(4) Have a net worth of at least $10,000 to assure his financial responsibility.

(5) Have sufficient funds available to meet ordinary operating expenses which, if not paid, would cause cessation of operations.

(6) Furnish CCC a completed Application for Approval of a Warehouse (Form CCC-1029).

(7) Furnish CCC a completed Schedule of Rates (Form CCC-1030-2) on which he certifies that the rates quoted in the schedule are not in excess of rates charged other customers.

(8) Furnish CCC financial statements as may be required under § 1422.3.

(9) Furnish CCC surety bonds as may be required under § 1422.4.

(10) Maintain complete and accurate inventory and operating records.

(11) If State or local law requires that warehousemen be licensed to engage in the business of storing goods for hire, furnish CCC evidence that he is so licensed by the appropriate licensing authority.

(b) Supervisory employees of the warehouse shall meet the requirements of (1) paragraph (a)(2) of this section, and (2) paragraph (a)(3) of this section.

(c) Owners, directors, responsible officers, and employees of the warehouse shall meet requirements of paragraph (a)(3) of this section.

(d) The warehouse shall meet the following requirements:

(1) Be of sound construction with equipment in good repair, and so constructed as to adequately protect the peanuts.

(2) Be under the control at all times of the warehouseman who executes the storage contract. Peanuts are not to be stored in an area operated as a "field warehouse" unless the ware-

houseman is the "field warehouseman."

(3) Not be subject to greater than normal risk of fire, flood, or other hazards.

(4) Have equipment to adequately handle, preserve, and protect the peanuts, including dual refrigeration units and adequate fire fighting equipment.

(5) Have space for the storage separate from peanuts of any products which CCC determines adversely affect the storage life, quality, or flavor of peanuts or are subject to a significantly greater fire risk than peanuts.

(6) Have adequate load-out capacity, as determined by CCC.

[32 FR 20767, Dec. 23, 1967; 33 FR 223, Jan. 6, 1968]

§ 1422.3 Financial statement.

(a) Except as provided in § 1422.6, the warehouseman shall furnish either (1) a fully completed financial statement on Form TW-51, Financial Statement, or (2) a Form TW-51 (i) completed as to page 1 and the General Information and Certification section of page 4, and (ii) accompanied by a financial statement prepared and certified or otherwise authenticated by the public accountant to the extent consistent with the accountant's verification of the facts contained in the statement. Such certification or authentication may be separate from the financial statement. The warehouseman shall execute the Certification on Form TW-51 in every case.

(b) A financial statement furnished by a warehouseman shall show the financial condition of the warehouseman as of the date not more than 60 days prior to (1) the date of the application, if the statement accompanies the application, or (2) the date of the statement, if the statement is furnished under § 1422.9.

(c) The financial statement and other financial data furnished by a warehouseman will not be disclosed by CCC except as required by law or authorized by CCC regulations relating to official records.

§ 1422.4 Bonding requirements.

(a) Except as provided in § 1422.6 and paragraph (b) of this section, the warehouseman shall furnish to CCC a performance bond, executed on a form furnished or approved by CCC by surety companies which have been approved by the U.S. Treasury Department (Circular No. 570) and which maintain an officer or representative authorized to accept service of legal process in the State where the warehouse is located.

(1) The amount of such performance bond shall be not less than 5 percent of the net book value of the estimated quantity of peanuts to be stored, but in no event less than $5,000 or, except as provided in paragraph (c) of this section more than $100,000.

(2) The warehouseman may apply against the total amount of bond coverage required the amount of a surety bond which is furnished under State law or under operational rules of nongovernmental supervisory bodies and which is determined by the Director, Producer Associations Division, to protect adequately the interest of CCC.

(b) Cash, negotiable securities, and legal liability insurance policies may be accepted in lieu of the equivalent amount of required bond coverage under the following conditions:

(1) CCC will determine the acceptability of and valuation to be placed on any cash or negotiable securities offered in substitution for bond coverage. When the period for which the bond was required has ended and it is determined that all liability under the storage agreement with CCC has terminated, the cash or securities will be returned to the warehouseman.

(2) Legal liability insurance policies offered in substitution for bond coverage must show CCC as the insured and be approved by the Director, Producer Associations Division.

(c) Notwithstanding any other provisions of this subpart, CCC may require additional bond coverage if in the light of all the circumstances relating to the operation of the warehouse, CCC determines that the amount of bond coverage required under paragraph (a)(1) of this section is not sufficient to protect adequately the interests of CCC.

§ 1422.5 Inspection of warehouses.

Except in the case of a warehouse licensed under the U.S. Warehouse Act for the storage and handling of peanuts, prior to the time CCC approves a warehouse for the storage and handling of peanuts CCC will have the warehouse examined and will take such other action as it considers necessary to determine whether the requirements of § 1422.2 have been met. The warehouse examiner will make recommendations regarding the approval or disapproval of the warehouse.

§ 1422.6 Exceptions.

Notwithstanding any other provision of this subpart:

(a) Warehousemen licensed under the U.S. Warehouse Act for the storage and handling of peanuts will not be required to furnish performance bonds or financial statements in order to be approved by CCC, and their warehouses will not be subject to regular examinations other than those required by that Act, but will be subject to such special examinations as CCC may determine are necessary. All other requirements of this subpart shall, unless otherwise provided, be met by such warehousemen seeking approval under this subpart.

(b) CCC will accept a Certificate of Competency issued by the Small Business Administration with respect to a warehouseman as establishing conformance by the warehouseman with the standards prescribed in § 1422.2(a)(1), (2), (4), and (5); (b)(1); and (d)(1), (2), (3), and (4).

(c) CCC may approve a warehouseman who meets the standard set forth in paragraph (a)(4) of § 1422.2 but who fails, or whose warehouse fails to meet one or more of the other standards of that section, if (1) CCC determines that the storage and handling conditions within the warehouse provide satisfactory protection for peanuts, (2) CCC determines that the services of the warehouseman are required, and (3) the warehouseman furnishes additional bond coverage (or acceptable substitute security) which is in an amount equal to at least twice the amount of the bond requirement under § 1422.4(a)(1) and which meets the other requirements of § 1422.4.

§ 1422.7 Basis for approval or disapproval.

A review and an analysis will be made of the information disclosed by the warehouseman's application, warehouse examiner's report and recommendation, financial statement, credit reports, and other pertinent information available from other sources. If, on the basis of this review and analysis, it is determined that the warehouseman and the warehouse conform with the standards and other requirements set out in this subpart, the warehouse will be approved. If it is determined that the warehouseman fails to meet the standard set forth in §§ 1422.2(a)(4) and 1422.8, the warehouse will not be approved. If it is determined that one or more of the other standards of § 1422.2 are not met, the applicant may be approved as provided in § 1422.6(c).

§ 1422.8 Other conditions for disapproval.

Applications shall not be approved (or existing approval continued in effect) if:

(a) The warehouseman (if license is required) is in violation of any provisions of the regulations of the licensing authority, or if any condition which has resulted or may result in the refusal, suspension, or revocation of the applicable warehouse license has not been corrected. Correction of any such condition shall not result in automatic approval of the warehouse and CCC may require the submission of a new application, such additional information as it deems pertinent, and a new inspection of the warehouse to determine whether it meets the requirements of this subpart.

(b) The warehouseman operating the warehouse for which approval is being sought, or any of the directors, responsible officers and employees thereof are suspended or debarred from contracting pursuant to regulations of CCC.

§ 1422.9 Approval of warehouse and duration of approval.

(a) After a warehouse has been approved and the applicable storage contract has been signed by CCC, a copy of such contract will be forwarded to the warehouseman by CCC. The warehouse will then be eligible to store and handle CCC-owned and loan peanuts.

(b) The financial condition of, and the amount of bond or substitute security furnished by, approved warehousemen will be reviewed from time to time to determine that the requirements of CCC are being met and the warehouseman shall furnish any additional bond coverage or substitute security which may be determined by CCC to be required under the provisions of this subpart. The warehouse will be reexamined from time to time to determine its continued compliance with the standards and requirements of this subpart. If at any time it is determined that a warehouseman or the warehouse does not conform with the standards and other requirements set out in this subpart, CCC shall take such appropriate action as may be necessary to protect the interests of CCC.

(c) Approval of the warehouse will remain in effect until the warehouse is removed from the list of approved warehouses, the storage contract is terminated, or the warehouseman is suspended or debarred from contracting with CCC under applicable regulations.

§ 1422.10 Waiver of requirements.

If warehousing services required in fulfilling responsibilities under CCC's programs cannot be secured under the provisions of this subpart and no reasonable and economical alternative is available, CCC may exempt the applicant from one or more of the provisions of this subpart and may establish other requirements in lieu thereof as determined necessary to safeguard the interests of CCC. Such action may be taken only by the Executive Vice President, Commodity Credit Corporation.

PART 1423—PROCESSED AGRICULTURAL COMMODITIES

Subpart—Standards for Approval of Dry and Cold Storage Warehouses for Processed Agricultural Commodities, Extracted Honey, and Bulk Oils

Sec.
1423.1 General statement and administration.
1423.2 Basic standards.
1423.3 Bonding requirements for net worth.
1423.4 Examination of warehouses.
1423.5 Exceptions.
1423.6 Approval of warehouse, requests for reconsideration.
1423.7 Exemption from requirements.
1423.8 OMB control numbers assigned pursuant to Paperwork Reduction Act.

AUTHORITY: Secs. 4 and 5, 62 Stat. 1070, as amended, (15 U.S.C. 714b and c).

Subpart—Standards for Approval of Dry and Cold Storage Warehouses for Processed Agricultural Commodities, Extracted Honey, and Bulk Oils

SOURCE: 44 FR 67081, Nov. 23, 1979, unless otherwise noted.

§ 1423.1 General statement and administration.

(a) This subpart prescribes the requirements which must be met and the procedures which must be followed by a warehouseman in the United States or Puerto Rico who desires the approval by the Commodity Credit Corporation (hereinafter referred to as "CCC") of warehouse(s) for the storage and handling of:

(1) Dry or refrigerated processed agricultural commodities under a Processed Commodities Storage Agreement (hereinafter referred to as "processed commodities"),

(2) Bulk oils, under a Contract or Agreement for Tank Storage, which are owned by CCC or held by CCC as collateral for price support loans, and

(3) Extracted Honey (hereinafter referred to as "honey") under a Honey Storage Agreement, either in bulk or in containers meeting specifications in the applicable honey price support

regulations, which is owned by CCC or held by CCC as security for price support loans. This subpart shall not apply to processed commodities, extracted honey, and bulk oils purchased in store by CCC for prompt shipment or to handling of commodities.

(b) Copies of the CCC storage agreement and forms required for obtaining approval under this subpart may be obtained from the Kansas City Commodity Office, U.S. Department of Agriculture, P.O. Box 205, Kansas City, Missouri 64141 (hereinafter referred to as the "KCCO").

(c) A warehouse must be approved by KCCO and a storage contract or agreement must be in effect between CCC and the warehouseman before CCC will use such warehouse. The approval of a warehouse or the entering into of a storage contract or agreement does not constitute a commitment that CCC will use the warehouse, and no official or employee of the U.S. Department of Agriculture is authorized to make any such commitment.

(d) A warehouseman when applying for approval under this subpart, shall submit to CCC at KCCO:

(1) A completed Form CCC-560, "Application for Approval of Warehouse (Processed Commodities)", or Form CCC-513, "Application for Approval of Tank Farm", or Form CCC-55, "Application for Approval of Warehouse for Honey Storage Contract", whichever is applicable,

(2) A current financial statement on Form WA-51, "Financial Statement", supported by such supplemental schedules as CCC may request. Financial statements may be submitted on forms other than Form WA-51 with approval of the Director, KCCO, or the Director's designee. Financial statements shall show the financial condition of the warehouseman as of a date no earlier than ninety (90) days prior to the date of the warehouseman's application, or such other date as CCC may prescribe. Additional financial statements shall be furnished annually and at such other times as CCC may require. CCC also may require that financial statements prepared by the warehouseman or by a public accountant be examined by an independent certified public accountant in accordance with generally accepted auditing standards. Only one financial statement is required for a chain of warehouses owned or operated by a single business entity. If approved by the Director, KCCO, or the Director's designee, the financial statement of a parent company, which includes the financial position of a wholly-owned subsidiary, may be used to meet the CCC standards for approval for the wholly-owned subsidiary.

(3) Copies of the warehouseman's tariff and any changes thereto, and

(4) Evidence that the warehouseman is licensed by the appropriate licensing authority as required under § 1423.2(a)(2) and such other documents or information as CCC may require.

[44 FR 67081, Nov. 23, 1979, as amended at 45 FR 84009, Dec. 22, 1980; Amdt. 3, 50 FR 42512, Oct. 21, 1985]

§ 1423.2 Basic standards.

Unless otherwise provided in this subpart, each warehouseman and each of the warehouses owned or operated by such warehouseman for which CCC approval is sought for the storage or handling of CCC-owned or loan commodities shall meet the following standards:

(a) The warehouseman shall:

(1) Be an individual, partnership, corporation, association, or other legal entity engaged in the business of storing or handling for hire, or both, the applicable commodity. The warehouseman, if a corporation, shall be authorized by its charter to engage in such business.

(2) Have a current and valid license for the kind of storage operation for which the warehouseman seeks approval if such a license is required by State or local laws or regulations.

(3) Have a net worth which is the greater of $25,000 or (i) for dairy and other processed commodities (other than those shown in paragraph (a)(3)(ii) of this section, the amount which results from multiplying five (5) percent of the current purchase price, times the quantity of the commodity to be stored; (ii) for honey, sugar and bulk oils, the amount which results

from multiplying the storage capacity of the flat warehouse space available to CCC or the maximum capacity of the bulk tank(s), whichever is applicable, times five (5) percent of the current loan value for honey and sugar and five (5) percent of the current market value for bulk oils. The net worth need not exceed $250,000. If the calculated net worth exceeds $25,000, the warehouseman may satisfy any deficiency in net worth between the $25,000 minimum requirement and such calculated net worth by furnishing bonds (or acceptable substitute security) meeting the requirements of § 1423.3,

(4) Have available sufficient funds to meet ordinary operating expenses,

(5) Have satisfactory corrected, upon request by CCC, any deficiencies in the performance of any storage contract or agreement with CCC,

(6) Use only warehouse receipts or such other documents as CCC may prescribe,

(7) Maintain accurate and complete inventory and operating records,

(8) Have available at the warehouse adequate and operable firefighting equipment for the type of warehouse and applicable stored commodity, and

(9) Have a work force and equipment available to complete loadout as stated below or as CCC may prescribe:

(i) Forty-five (45) working days of the total quantity of all honey and processed commodities stored for CCC.

(ii) Seventy-five (75) working days of that quantity of bulk oils for which the warehouse is or may be approved under a contract with CCC.

(b) The warehouseman, officials, or supervisory employees of the warehouseman in charge of the warehouse operations shall have the necessary experience, organization technical qualifications, and skills in the warehousing business regarding the applicable commodity to enable them to provide proper storage and handling services.

(c) Warehouseman, officials, and each of the supervisory employees of the warehouseman in charge of the warehouse operations shall:

(1) Have a satisfactory record of integrity, judgment, and performance, and

(2) Be neither suspended nor debarred under applicable CCC suspension and debarment regulations.

(d) The warehouse shall:

(1) Be of sound construction, in good state of repair, and adequately equipped to receive, handle, store, preserve, and deliver the applicable commodity,

(2) Be under the control of the contracting warehouseman at all times. If a warehouse is leased by the warehouseman, a copy of the written lease agreement must be furnished to CCC at the time the warehouseman applies for approval under this subpart. The lease agreement must be renewable and must provide that the lessor cannot cancel the agreement without giving at least 120 days notice to the warehouseman. All leases are subject to approval by the CCC Contracting Officer, and

(3) Not be subject to greater than normal risk of fire, flood or other hazards.

[44 FR 67081, Nov. 23, 1979, as amended by Amdt. 3, 50 FR 42512, Oct. 21, 1985]

§ 1423.3 Bonding requirements for net worth.

A bond furnished by a warehouseman under this subpart must meet the following requirements:

(a) Such bond shall be executed by a surety which:

(1) Has been approved by the U.S. Treasury Department, and

(2) Maintains an officer or representative authorized to accept service of legal process in the State where the warehouse is located.

(b) Such bond shall be on Form CCC-33, "Warehouseman's Bond", except that a bond furnished under State law (statutory bond) or under operational rules of nongovernmental supervisory agencies may be accepted in an equivalent amount as a substitute for a bond running directly to CCC if:

(1) CCC determines that such bond provides adequate protection to CCC.

(2) It has been executed by a surety specified in paragraph (a) of this section or has a blanket rider and endorsement executed by such a surety with the liability of the surety under

such rider or endorsement being the same as that of the surety under the original bond, and

(3) It is noncancellable for not less than one hundred twenty (120) days or includes a rider providing for not less than one hundred twenty (120) days' notice to CCC before cancellation. Excess coverage on a substitute bond for one warehouse will not be accepted or applied by CCC against insufficient bond coverage on other warehouses.

(c) Cash and negotiable securities offered by a warehouseman may be accepted by CCC in lieu of the equivalent amount of required bond coverage. Any such cash or negotiable securities accepted by CCC will be returned to the warehouseman when the period for which coverage was required has ended and there appears to CCC to be no liability under the storage contract or agreement.

(d) A legal liability insurance policy may be accepted by CCC in lieu of the required amount of bond coverage provided such policy contains a clause or rider making the policy payable to CCC, CCC determines that it affords protection equivalent to a bond, and the Office of the General Counsel, U.S. Department of Agriculture, approves it for legal sufficiency.

(e) An irrevocable letter of credit may be accepted by CCC in lieu of the required amount of bond coverage provided that the issuing bank is a commercial bank insured by the Federal Deposit Insurance Corporation. Such standby letter of credit shall be on Form CCC-33A, "Irrevocable Letter of Credit", or on such other form as may be specifically approved by the Director, KCCO, or the Director's designee.

(Pub. L. 80-89, 62 Stat. 1070, as amended (15 U.S.C. 714b))

[44 FR 67081, Nov. 23, 1979, as amended by Amdt. 3, 50 FR 42513, Oct. 21, 1985]

§ 1423.4 Examination of warehouses.

Except as otherwise provided in this subpart a warehouse must be examined by a person designated by CCC before it may be approved by CCC for the storage or handling of commodities and periodically thereafter to determine its compliance with CCC's standards and requirements.

§ 1423.5 Exceptions.

Notwithstanding any other provisions of this subpart:

(a) The financial, bond, and original and periodic warehouse examination provisions of this subpart do not apply to any warehouseman approved or applying for approval for the storage and handling of commodities under CCC programs if the warehouse is licensed under the U.S. Warehouse Act for such commodities, but a special examination shall be made of such warehouse whenever CCC determines such action is necessary.

(b) A warehouseman who has a net worth of at least $25,000 but who fails, or whose warehouse fails, to meet one or more of the other standards of this subpart may be approved if:

(1) CCC determines that the warehouse services are needed and the warehouse storage and handling conditions provide satisfactory protection for the commodity, and

(2) The warehouseman furnishes such additional bond coverage (or cash or acceptable negotiable securities or legal liability insurance policy) as may be prescribed by CCC.

[44 FR 67081, Nov. 23, 1979, as amended by Amdt. 3, 50 FR 42513, Oct. 21, 1985]

§ 1423.6 Approval of warehouse, requests for reconsideration.

(a) CCC will approve a warehouse if it determines that the warehouse meets the standards set forth in this subpart. CCC will send a notice of approval to the warehouseman. Approval under this subpart, however, does not relieve the warehouseman of the responsibility for performing the warehouseman's obligations under any agreement with CCC or any other agency of the United States.

(b) Except as otherwise provided in this subpart:

(1) CCC will not approve the warehouse if CCC determines that the warehouse does not meet the standards set forth in this subpart; and

(2) CCC will send any notice of rejection of approval to the warehouseman. The notice will state the cause(s) for such action. Unless the warehouseman or any officials or supervisory employees of the warehouseman are

suspended or debarred, CCC will approve the warehouse if the warehouseman establishes that the causes for CCC's rejection of approval have been remedied.

(c) If rejection of approval by CCC is due to the warehouseman's failure to meet the standards set forth:

(1) In § 1423.2, other than the standard set forth in paragraph (c)(2) thereof, the warehouseman may, at any time after receiving notice of such action, request reconsideration of the action and present to the Director, KCCO, in writing, information in support of such request. The Director shall consider such information in making a determination and notify the warehouseman in writing of such determination. The warehouseman may, if dissatisfied with the Director's determination, obtain a review of the determination and an informal hearing thereon by filing an appeal with the Deputy Administrator, Commodity Operations, Agricultural Stabilization and Conservation Service (hereinafter referred to as "ASCS"). The time of filing appeals, forms for requesting an appeal, nature of the informal hearing, determination and reopening of the hearing shall be as prescribed in the ASCS regulations governing appeals, 7 CFR Part 780. When appealing under such regulations, the warehouseman shall be considered as a "participant"'; and

(2) In § 1423.2(c)(2), the warehouseman's administrative appeal rights with respect to suspension and debarment shall be in accordance with applicable CCC regulations. After expiration of a period of suspension or debarment, a warehouseman may, at any time, apply for approval under this subpart.

[Amdt. 3, 50 FR 42513, Oct. 21, 1985]

§ 1423.7 Exemption from requirements.

(a) If warehousing services in any area cannot be secured under the provisions of this subpart, and no reasonable and economical alternative is available for securing such services, the President or Executive Vice President, CCC, may exempt, in writing, applicants in such area from one or more of the standards of this subpart and may establish such other standards as are considered necessary to safeguard satisfactorily the interests of CCC.

(b) Warehousemen who are currently under contract with CCC will be required to meet the terms and conditions of these regulations at the time of renewal of their contract.

§ 1423.8 OMB control numbers assigned pursuant to Paperwork Reduction Act.

The information collection requirements contained in this regulation (7 CFR Part 1423, Subpart—Standards for Approval for Dry and Cold Storage Warehouses for Processed Agricultural Commodities, Extracted Honey, and Oils) have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Numbers 0560-0052, 0560-0044, 0560-0064, 0560-0065, 0560-0034, and 0560-0041.

[Amdt. 3, 50 FR 42513, Oct. 21, 1985]

PART 1425—COOPERATIVE MARKETING ASSOCIATIONS

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1425.23 Appeals.

AUTHORITY: 15 U.S.C. 714b, 714c, and 714j; 7 U.S.C. 1444(a), 1441, 1446d, 1447, 1421(a).

SOURCE: 51 FR 36924, Oct. 16, 1986, unless otherwise noted.

§ 1425.1 General provisions.

This part sets forth the terms and conditions which a cooperative marketing association ("cooperative") must meet in order to be approved to obtain from the Commodity Credit Corporation (CCC) price support on behalf of its members for the 1986 and subsequent crops of a commodity. A cooperative meeting such terms and conditions may obtain price support with respect to any crop of a commodity for which a price support program is in effect if regulations issued with respect to such price support program incorporate the provisions of this part or permit a cooperative which meets the provisions of this part to participate in the price support program for a crop of such commodity.

§ 1425.2 Administration.

On behalf of CCC, the Agricultural Stabilization and Conservation Service (ASCS) will administer the provisions of this part under the general direction and supervision of the Deputy Administrator, State and County Operations, ASCS. In the field, the provisions of this part will be administered by the State and county ASC committees.

§ 1425.3 Definitions.

(a) *Active member* means a member who has utilized the services offered by a cooperative in one of the three preceding cooperative fiscal years or such shorter period as may be provided in the cooperative's articles of incorporation or bylaws.

(b) *Approved cooperative* means a cooperative that has been approved by CCC to participate in price support programs authorized with respect to one or more authorized commodities.

(c) *ASCS* means the Agricultural Stabilization and Conservation Service, an agency of the U.S. Department of Agriculture.

(d) *Authorized commodity* means those commodities for which an approved cooperative may apply for price support, including barley, corn, cotton, honey, oats, rice, rye, seed cotton, sorghum, soybeans, and wheat.

(e) *CCC* means the Commodity Credit Corporation.

(f) *Close relative* means a spouse or a person related as child, parent, brother, or sister, by blood, adoption, or marriage, and shall include in-laws within such categories of relationship.

(g) *Eligible commodity* means a commodity which meets the eligibility requirements applicable to such commodity set forth in Chapter XIV of this title which is delivered to, or which is acquired by, a cooperative.

(h) *Member* means a person who is a member of an agricultural cooperative or an agricultural cooperative member of another cooperative. A person applying for membership in an agricultural cooperative must have:

(1) Fully paid for the membership stock or earned equity credits;

(2) Be accepted by the cooperative; and

(3) Be entitled to all membership rights including voting and holding office except where the law of the State in which the cooperative is incorporated provides for stock subscribers as members but does not allow them to hold office.

(i) *Person* means such term as defined in the regulations governing the Reconstitution of Farms and Allotments, Part 719 of this title.

(j) *Producer* means such term as defined in the regulations governing the Reconstitution of Farms and Allotments, Part 719 of this title.

§ 1425.4 Approval.

(a) *Application.* In order for a cooperative to obtain price support with respect to the 1986 and subsequent crops of authorized commodities, a cooperative must submit an application for approval with respect to such authorized commodities to CCC.

(b) An application must include:

(1) A completed Form CCC-846;

(2) The latest financial audit of the cooperative including any accompanying notes, schedules, or exhibits, certified by a certified public accountant from the books of original entry as fairly representing the financial condition of the cooperative;

(3) A copy of the cooperative's articles of incorporation or articles of association, bylaws, all marketing agreements for eligible commodities and

any other document which is requested by CCC with respect to the cooperative's methods of conducting business which an official of the cooperative has certified as being current;

(4) A conflict of interest statement (Form CCC-846-2) for each director, officer, and principal employee;

(5) Resolutions made by the cooperative's board of directors which provide that the cooperative will abide by provisions of this part and the nondiscrimination provisions thereof;

(6) A statement of any cooperative transactions that either have occurred in the preceding year before the initial application for approval is submitted or are contemplated by the cooperative as provided in § 1425.12;

(7) A detailed description of the method by which proceeds from a pool of eligible commodities for which price support is obtained will be distributed as provided for in § 1425.17.

(8) Other information requested by CCC concerning the organizational, operational, financial or any other aspect of the cooperative determined by CCC to be necessary to act upon the application for approval.

(c) *Annual recertification.* An approved cooperative must submit the following information to CCC:

(1) A completed Form CCC-846-1;

(2) The cooperative's latest complete financial audit;

(3) The numbers of active and inactive members;

(4) A statement showing the allocated equity in the cooperative owned by active members, inactive members, and others, and the unallocated equity in the cooperative;

(5) The names of any members who own in excess of 10 percent of the equity of the cooperative and the amount owned by each;

(6) The quantity of each eligible commodity delivered to the cooperative for marketing and the portion of such commodities received from active members during the prior year;

(7) The quantity of each eligible commodity tendered by the cooperative to CCC as security for a price support loan and the quantity of such commodities redeemed during the prior year;

(8) The quantity of each commodity tendered to CCC for price support purchase during the prior year; and

(9) A statement of any cooperative transactions that either have occurred in the cooperative's prior fiscal year of operations or are contemplated to occur in the cooperative's current fiscal year as provided for in § 1425.12.

(d) *Changes.* An approved cooperative shall promptly furnish to CCC:

(1) Any changes in the articles of incorporation, bylaws, and marketing agreements of the cooperative;

(2) Any resolutions affecting price support operations;

(3) Any changes in officers, directors, or principal employees and conflict of interest statements in accordance with § 1425.12(d);

(4) Any change in pooling operations with an explanation of the change and why such change was necessary; and

(5) Additional information as may be requested by CCC at any time with respect to the continued approval by CCC of the cooperative as an approved cooperative in accordance with this part.

§ 1425.5 Confidentiality.

Information submitted to CCC with respect to trade secrets or financial or commercial operations or information concerning the financial condition of a cooperative, whether for initial approval or continued approval, shall be kept confidential by the officers and employees of CCC and the Department of Agriculture except to the extent CCC determines such disclosures are necessary for the conduct of a price support program or such information is required to be disclosed by law.

§ 1425.6 Approved cooperatives.

(a) *Determination of approval.* CCC shall, in accordance with the provisions of this part, approve a cooperative marketing association to obtain price support.

(b) *Type of approval.* CCC may approve a cooperative to participate in a price support program with respect to the 1986 or subsequent crop of a commodity as:

(1) Unconditionally approved; or

(2) Conditionally approved.

A cooperative may be conditionally approved if it has not met all of the requirements of this part but has substantially met all such requirements. Such a cooperative must agree in writing to meet all of the requirements for approval set forth in this part within the time period specified by CCC. Board resolutions in which the cooperative agrees to comply with provisions of this part may be accepted by CCC as substantial compliance with the requirements for approval for purposes of this section.

(c) *Term of approval.* A cooperative is approved to participate in a price support program for an authorized commodity until such time as the cooperative's approval is suspended or terminated by CCC.

§ 1425.7 Suspension and termination of approval.

(a) *Suspension.* A cooperative may be suspended by CCC from further participation in a price support program if it is determined that the cooperative has not operated in accordance with representations made in the cooperative's application for approval, has not complied with applicable regulations, or has failed to correct deficiencies noted during an administrative review or an audit of the cooperative's operations with respect to a price support program. Such suspension may be lifted upon the receipt of documents indicating that the cooperative has complied with all of the requirements for approval. If such documents are not received within one year from the date of the suspension, the cooperative's approval for participation in a price support program shall be terminated.

(b) *Termination.* (1) CCC may terminate the approval of the cooperative marketing association's ability to pledge commodities as collateral for CCC price support loans by giving the cooperative written notice of such termination. Ten days after the termination date, or at anytime thereafter. CCC may on demand call all outstanding CCC price support loans made to the cooperative. The commodities pledged as collateral for such loans may be redeemed not later than the date specified by CCC. If redemption is not made by such date, title to the commodity shall vest in CCC and CCC shall have no obligation to pay for any market value the commodity may have in excess of the principal amount of such loans.

(2) An approved cooperative may at any time, upon written notice to CCC, voluntarily terminate the cooperative's approval to participate in a price support program, provided, that the cooperative does not have any outstanding price support loans at the time of voluntary termination.

§ 1425.8 Ownership and control.

(a) *Active members.* All approved cooperatives must be owned and controlled by active members of the cooperative.

(b) *Allocated equity.* The cooperative must establish that its active members own equity in the cooperative in an amount constituting more than 50 percent of the allocated equity of the cooperative. Such ownership equity shall be in the form of stock, revolving fund certificates, capital retains, book credits, or other capital interests issued by the cooperative. In determining the requisite equity held by active members, the following shall be deducted from the amount of equity allocated to such active members:

(1) The allocated equity held by any active member who owns more than 10 percent of the cooperative's total equity; and

(2) The allocated equity of any active member that has acquired equity as a result of a loan from the cooperative unless such member is obligated to repay the loan within a reasonable period of time.

(c) *Control.* The organization and operation of the cooperative shall be under the control of its active members. A cooperative shall be considered to be under the control of its active members if more than 50 percent of its membership consists of active members.

(d) *Directors.* (1) All directors must be:

(i) Active members of the cooperative;

(ii) Representatives of such active members who are also employed as a farm manager or its equivalent (including an officer of a corporation and a partner in partnership); or

(iii) Officers, employees, or active members of an active member cooperative.

(2) A director shall be nominated and elected by members except when selected to fill the unexpired term of a director so elected.

(e) *Approved plan.* An applicant or an approved cooperative not under the ownership or control, or both, of its active members, may be approved by CCC to participate in a price support program if the cooperative is able to establish that, by retiring the equity of its inactive members or by obtaining new members, the cooperative can vest ownership and control in its active members, as required by this section, by a date specified by CCC.

§ 1425.9 Charter and bylaw provisions.

The articles of incorporation, articles of association, or the bylaws of the cooperative shall provide for each of the following requirements:

(a) *Annual meeting.* The cooperative shall hold an annual meeting of members or delegates at one or more locations within its operating area which will afford a reasonable opportunity for all members or their delegates to attend and participate.

(b) *Notice of meeting.* The cooperative shall give written notice to each member or delegate, of the time, place, and purpose of all regular and special meetings of members or delegates.

(c) *Open membership.* The cooperative shall admit to membership every applicant who (1) Applies for admission for the purpose of participating in the activities of the cooperative, and (2) is eligible for membership under the statute incorporating the cooperative. The cooperative may, however, refuse membership to an applicant if the cooperative bases the refusal on reasonable grounds that the applicant's admission would prejudice, hinder, or otherwise obstruct the interests or purposes of the cooperative.

(d) *Nominations.* (1) Nominations for election of delegates and directors shall be made by members.

(2) Nominations for officers shall be made by elected directors.

(3) Nominations may be made by balloting, nominating committee, petition of members, or from the floor, provided that nominations from the floor shall be requested in addition to nominations made by a nominating committee or by petition.

(e) *Balloting.* The election of directors, delegates, and officers shall be by balloting when there are two or more nominees for a position to be filled, or there are more nominees than there are positions to be filled.

(f) *Voting rights.* Each member of the cooperative shall have a single vote regardless of the number of shares of stock owned or controlled by such member except that CCC may approve another voting method which will adequately protect the ownership and control interests of the members of the cooperative.

(g) *Proxy or power of attorney.* (1) Except as provided in paragraph (g)(2) of this section, voting by proxy or under a power of attorney shall not be permitted.

(2) Voting by proxy or under power of attorney may be permitted if a cooperative:

(i) Determines that it is necessary to amend the cooperative's articles of incorporation, articles of association, or bylaws, and

(ii) Establishes to the satisfaction of CCC that the law of the State in which the cooperative is incorporated permits voting by proxy or power of attorney, but does not permit members to vote by mail, with respect to such issue.

(h) *Financial statement.* Annually, each member of the cooperative shall be given a summary financial statement of the cooperative which is based on an annual audit conducted by a certified public accountant of the recordkeeping books and accounts of the cooperative.

§ 1425.10 Financial condition.

(a) *Financial ability.* An approved cooperative must be financially able to make financial advances to its members and to market commodities of such members.

(b) *Factors to consider.* The factors which will be considered in determining the financial condition of a cooperative include the following:

(1) The ability of the cooperative to meet current obligations, including the expenses of marketing the commodities on behalf of its members;

(2) The ability of the cooperative to make advance payments to its members, either from its own funds or through arrangements with financial or other institutions; and

(3)(i) The net worth of the cooperative. The cooperative shall be considered to have a sufficient net worth if such net worth is equal to the product of an amount per unit for a commodity (as set forth in Table 1) multiplied by the total number of units of such commodity handled by the cooperative during the preceding marketing year, or, if the cooperative is in its first full marketing year of operations, the estimated quantity of such commodity that it will handle during such year. If a cooperative has not been approved to participate in a price support program for each of the three crop years immediately preceding the crop year for which approval is being considered, CCC may establish the unit total of a commodity to be used in determining the sufficiency of the cooperative's net worth.

(ii) If the amount of the net worth of the cooperative is between 34 and 99 percent of the amount computed in accordance with paragraph (b)(3)(i) and the cooperative is determined by CCC to be otherwise financially sound, CCC may determine that the operation of the cooperative is being carried out in a financially sound basis. Such a determination by CCC may be made if (A) the board of directors of the cooperative agrees to make a capital retain in the amount set forth in Table 2 with respect to each unit of the commodity delivered to the cooperative until the net worth of the cooperative is at least equal to the amount computed in accordance with paragraph (b)(3)(i) and (B) the cooperative agrees to deduct the full amount of the estimated expenses of handling the commodities received by the cooperative. The failure to carry out such agreements shall be grounds for terminating a cooperative's approval.

TABLE 1

Commodity	Unit	Amount per unit
Barley	Bushel	.13
Corn	Bushel	.13
Cotton	Bale	5.40
Honey	Hundredweight	1.90
Oats	Bushel	.13
Rice	Hundredweight	.52
Rye	Bushel	.13
Seed Cotton (lint basis)	Pounds	.008
Sorghum	Hundredweight	.19
Soybeans	Bushel	.43
Wheat	Bushel	.15

TABLE 2

Commodity	Unit	Amount per unit
Barley	Bushel	$0.07
Corn	Bushel	.07
Cotton	Bale	3.20
Honey	Hundredweight	.95
Oats	Bushel	.07
Rice	Hundredweight	.26
Rye	Bushel	.07
Seed Cotton (lint basis)	Pounds	.004
Sorghum	Hundredweight	.10
Soybeans	Bushel	.22
Wheat	Bushel	.08

(c) For the purposes of paragraph (b) of this section, the net worth of the cooperative shall be reduced by the value of the amount of any assets or funds which are not reflected as a liability of the cooperative in the financial statement of the cooperative and which are:

(1) Pledged as security, deposited, or otherwise used to secure or guarantee any indebtedness of the cooperative, or

(2) Deposited in a restricted account or otherwise used to guarantee the performance of an obligation of the cooperative.

§ 1425.11 Operations.

(a) A cooperative shall establish to the satisfaction of CCC, with respect to the commodity for which approval is requested, that the cooperative is so organized and staffed by individuals employed directly by the cooperative that it is able to perform contracts with its members and to provide an effective marketing operation for its members.

(b) If a cooperative cannot satisfactorily establish that it can provide an effective marketing operation for its members, the cooperative may enter into a marketing agreement with another cooperative marketing association to market the commodity only if:

(1) Such marketing agreement is permitted by law;

(2) The articles of incorporation, articles of association, or bylaws of the cooperative acquiring the marketing service and the marketing agreement such cooperative has entered into with its members provide the necessary authority to enter into such agreement;

(3) The cooperative acquiring the marketing service is a member of the cooperative which will provide the marketing service; and

(4) The cooperative which will provide the marketing service has been approved under this part to obtain price support for such commodity.

(c) Any marketing agreement entered into by a cooperative in accordance with the provisions of paragraph (b) of this section, must, as determined by CCC:

(1) Adequately protect the ownership and control interests of the cooperative members;

(2) Be in the best interest of the members of the cooperative acquiring the service; and

(3) Require that all proceeds from the marketing operation be distributed as provided in § 1425.17.

§ 1425.12 Conflict of interest.

(a) *Transactions detrimental to members.* The cooperative shall not be approved for participation in price support programs unless CCC determines that the cooperative's transactions, if any, which are of a kind described in this section have not operated and will not operate to the detriment of members of the cooperative.

(b) *Cooperative transactions.* The cooperative shall submit with the initial application for approval, and with each recertification, a detailed report concerning all of the transactions (including transactions involving purchases, sales, handling, marketing, insurance, transportation, warehousing, and related activities) of the cooperative with the following persons which differ from transactions entered into by the cooperative with its general membership:

(1) Any director, officer, or principal employee of the cooperative, or any of their close relatives;

(2) Any partnership from which any person is entitled to receive a percentage of the gross profits;

(3) Any corporation in which any person owns stock;

(4) Any business entity from which any person receives fees for transacting business with or on behalf of the cooperative; or

(5) Any business entity in which an agent, director, officer or employee of the cooperative was an agent, director, officer or employee of such business entity.

(c) *Contemplated transactions.* The cooperative shall also submit a statement as to whether any transactions of the kind described in paragraph (b) of this section are contemplated between the date of the application, or the date such information is requested to be submitted in accordance with § 1425.4, as applicable, and the end of the next marketing year for the authorized commodity. If any transactions are contemplated, the cooperative shall submit a detailed explanation of such contemplated transactions and a statement of the reasons for such transactions.

(d) *Directors, officers, and employees.* The cooperative shall furnish information, as requested, showing the interest or relationship of its directors, officers, and principal employees and their close relatives with persons who engage in any business relating to a commodity for which the cooperative is approved to obtain price support. Such information shall be revised to reflect any change in any such interest or relationship.

§ 1425.13 Uniform marketing agreement.

(a) The cooperative must enter into a uniform marketing agreement with each member who delivers a commodity to an eligible pool for which price support is obtained on any quantity of the commodity in such pool.

(b) A cooperative may provide alternative methods of marketing commodities to its members, in addition to the methods set forth in its marketing agreement, if the terms and conditions thereof are reasonable to its members, and information concerning the use of such methods of marketing are made available to all members.

(c) An approved cooperative, when authorized by CCC, may offer additional marketing methods to its members on a limited membership basis for a period not to exceed two crop years before making such marketing method available to all members. If such limited marketing method is adopted as a permanent marketing method by the cooperative, information concerning such method and participation in such method shall be made available to all members. Such information may be published in the cooperative's membership publication or included in other written notice mailed to members.

§ 1425.14 Member business.

At least 80 percent of a crop of a commodity that is acquired by, or delivered to, the cooperative for marketing must be produced by its members in order for the cooperative to obtain price support for such crop. CCC may, for a period not to exceed two years, waive such requirement for a cooperative if:

(a) The quantity of such crop acquired by the cooperative for marketing from its members has a value greater than the value of the quantity acquired or received from nonmembers for marketing;

(b) The cooperative can establish to the satisfaction of CCC that such authorization is necessary for the efficient operation of the cooperative; and

(c) The cooperative has a plan approved by CCC which will bring the cooperative into compliance with the provisions of this section. Commodities purchased or acquired from CCC and processed products acquired from other processors or merchandisers shall not be considered in determining the volume of member or nonmember business.

§ 1425.15 Vested authority.

An approved cooperative shall have the authority to pledge as collateral for a price support loan the commodity delivered to it by its members, to place a lien on such commodity, and to market the commodity on behalf of its members even though the individual members retain the right, in effect, to determine the price at which the commodity can be marketed by the cooperative.

§ 1425.16 Eligible commodity and pooling.

(a) *Pools.* (1) A cooperative may establish separate pools as needed for quantities of a commodity.

(2) Price support will be made available to the cooperative with respect to a quantity of an eligible commodity included in an eligible pool as provided in paragraph (c) of this section.

(b) *Eligible pool.* (1) A pool shall be eligible for price support if:

(i) Except as provided in paragraph (b)(2) of this section, all of the commodity included in the pool is eligible for price support;

(ii) The eligible commodity in such pool was

(A) Delivered to the cooperative for marketing for the benefit of the members of the cooperative and

(B) Delivered by members who retain the right to share in the proceeds from the marketing of the commodity in accordance with § 1425.17; and

(iii) Except with respect to a quantity of a commodity pledged as collateral for a price support loan and which is redeemed within 15 days from the date the cooperative receives the proceeds from CCC, all of the commodity placed in such pool was delivered by members who have agreed to accept a payment of the initial advances made available to such producers by the cooperative with respect to such commodity in accordance with § 1425.17(a).

(2) A quantity of a commodity in a pool which is ineligible for price support because of grade or quality or, in the case of cotton because of bale weight or repacking, shall not make the pool ineligible for price support.

(c) *Availability of price support.* (1) Price support will be available to the cooperative for the quantity of a commodity stored commingled in an approved warehouse equal to the smaller of: (i) The quantity of an eligible commodity received from members of the cooperative, or (ii) the quantity of commodity which is in the cooperative's inventory. The cooperative must have in inventory a quantity of commodity of each class and grade at least equal to the quantity of that commodity of each class and grade pledged as loan collateral.

(2) Price support will be available as provided in §§ 1421.3(g) and 1434.3(d) for farm-stored commodities that have been delivered to the cooperative.

(3) Except as provided in paragraph (c)(2) of this section, price support will be available to the cooperative for the quantity of the eligible commodity stored identity preserved in an approved warehouse which was received from members of the cooperative and which is in the cooperative's inventory at the time such commodity is pledged as collateral for a price support loan or is offered to CCC for purchase.

(4) Price support eligibility for commingled commodities stored on a farm or in a warehouse may be transferred to an approved warehouse.

(d) *Allocation of costs and expenses.* If price support is obtained with respect to any quantity of a crop of a commodity which has been pooled, allocations by the cooperative of costs and expenses among separate pools for the crop of the commodity in a pool shall be made in accordance with sound accounting principles and practices.

(e) *Losses.* (1) Any losses incurred by the cooperative in the marketing of a crop of a commodity for which price support has not been obtained shall not be assessed against the proceeds from the marketing of a crop of a commodity included in a pool for which price support was obtained.

(2) Except as provided in paragraph (e)(3) of this section, losses incurred by the cooperative in the marketing of a crop of a commodity included in a pool for which price support has been obtained may not be carried forward and applied against subsequent crops of commodities included in a pool for which price support is obtained.

(3) (i) CCC may authorize an approved cooperative to carry forward losses incurred by the cooperative in the marketing of a crop of a commodity included in a pool for which price support has been obtained when CCC determines that such action will result in the equitable treatment of all members participating in comparable eligible pools in the period needed to offset losses and is not contrary to the purposes of the price support program.

(ii) The authorization referred to in paragraph (e)(3)(i) of this section will be approved on the basis of a plan, subject to the approval of CCC, for the carrying forward of losses submitted by an approved cooperative and will be continued on the condition that the approved cooperative remains in substantial compliance with the approved plan, as reflected in periodic progress reports.

(A) Factors which will be considered in determining whether to approve such a plan include, but are not limited to, the following: (*1*) The stability of the membership and participation between affected pools; (*2*) the financial condition of the cooperative; and (*3*) whether the loss can reasonably be expected to be amortized and recovered from future earnings over the proposed time period.

(B) The plan submitted by the cooperative must include the following: (*1*) A provision for notifying existing and new members of the cooperative of the plan to deduct eligible pool losses from subsequent eligible pool gains; and (*2*) a procedure for maintaining necessary data and records needed to generate periodic progress reports as directed by CCC.

(iii) Any losses incurred subsequent to those contained in the approved plan may only be carried forward against subsequent eligible pools in accordance with a revised plan which has been approved by CCC under the criteria specified in paragraph (e)(3) of this section.

[51 FR 36924, Oct. 16, 1986, as amended at 53 FR 19883, June 1, 1988]

§ 1425.17 Distribution of proceeds.

(a) *CCC loans and purchases.* (1) If CCC makes available price support loans or purchases with respect to any quantity of the eligible commodity in a pool, the proceeds from such loans or purchases shall be distributed to members participating in such pool on the basis of the quantity and quality of the commodity delivered by each member which is included in the pool less any authorized charges for services performed or paid by the cooperative which are necessary to condition the commodity or otherwise make the commodity eligible for price support. Except with respect to commodities which are pledged as collateral for a price support loan and which are redeemed within 15 days from the date the cooperative receives the loan proceeds from CCC, such proceeds shall be distributed within 15 days from such date.

(2) Any advances by the cooperative to its members who have a quantity of the commodity in the eligible pool for which advances are made prior to the pledging of the commodity as security for a CCC loan or prior to entering into a purchase agreement with CCC may be credited by the cooperative against the distribution required in paragraph (a)(1) of this section.

(b) *Pool proceeds.* (1) If price support is obtained from CCC for any quantity of the eligible commodity in a pool, all proceeds of such pool shall be distributed only to members participating in such pool on the basis of the quantity and quality of the commodity delivered by each member which is included in such pool.

(2) Except as provided in paragraph (b)(3) of this section, all proceeds from an eligible pool for which price support has been obtained shall not be combined with proceeds from ineligible pools for distribution and final settlement, and the method of distribution of proceeds shall be as specified in the information provided to CCC in accordance with § 1425.4(b)(7).

(3) Sales proceeds from an eligible pool may be combined with sales proceeds from ineligible pools or other eligible pools if the proceeds from such pools are allocated among the pools according to the quantity and quality of the commodity included in such pools.

(4) Pool proceeds obtained from price support made by CCC shall not be combined with proceeds from other eligible or ineligible pools.

(c) *Unclaimed funds.* If a cooperative has attempted to distribute to its members a part of its equity, as defined in § 1425.8, in accordance with the articles of incorporation, articles of association or the bylaws of the cooperative and has given notice of distribution both by publication and personal letter addressed to such members, the cooperative may provide, to the extent permitted by the law of the State applicable to such distribution, for reallocation of such undistributed equity to its members and patrons on an equitable basis if:

(1) The period of limitation for the payment of debts has run, such period to begin on the date the equity to be distributed was declared to be payable by the cooperative;

(2) The cooperative, 30 days prior to the lapse of the period of limitation specified in paragraph (c)(1) of this section, has given the affected member notice (by certified mail, return receipts requested, at the member's last known address as reflected on the books of the cooperative) of the amount of equity payable to such member(s) and notice that such equity may be distributed to other members and patrons if the affected member does not make a claim for such equity within the period of limitation specified in paragraph (c)(1) of this section; and

(3) No claim for payment of the equity to be distributed has been made within the period of limitation described in paragraph (c)(1) of this section.

[51 FR 36924, Oct. 16, 1986, as amended at 53 FR 19883, June 1, 1988]

§ 1425.18 Member cooperatives.

(a) *Obtaining price support.* Except as provided in paragraph (c) of this section, in order for a cooperative to obtain price support for any quantity of an eligible commodity delivered by a member cooperative or for a cooperative to obtain price support for any quantity of an eligible commodity included in the same pool with the commodity delivered by a member cooperative, the cooperative and such member cooperative must meet the requirements of this paragraph.

(1) The eligible commodity delivered by the member cooperative must be produced by the members of such member cooperative.

(2) The member cooperative must be authorized to:

(i) Sell the commodity;

(ii) Pledge such commodity as collateral for a price support loan;

(iii) Place a lien on such commodity; and

(iv) Deliver such commodity to the cooperative for marketing.

(3) The cooperative must either:

(i) In its articles of incorporation, articles of association, bylaws, or marketing agreement, require each such member cooperative to meet the requirements of this part; or

(ii) Determine and certify annually to CCC that each such member cooperative meets the requirements of this part.

(b) *State law.* The cooperative shall determine and certify annually to CCC that its member cooperatives which are not subject to paragraph (a) of this section are in compliance with the producer ownership, membership meeting, and voting requirements of applicable State law.

(c) *Exception.* An approved cooperative is required to meet only the provisions contained in paragraphs (a) (1) and (2) of this section with respect to a member cooperative for whom the member cooperative markets the production of the member cooperative's members in accordance with § 1425.11(b).

§ 1425.19 Nondiscrimination.

The cooperative shall not, on the ground of race, color, age, sex, religion, national origin, or physical or mental handicap, deny any producer participation in, or otherwise subject any producer to discrimination with respect to any benefits resulting from its approval to obtain price support and shall comply with the provisions of Title VI of the Civil Rights Act of 1964 and the Secretary's regulations issued thereunder, appearing in §§ 15.1-15.12 of this title (29 FR 16274 and 38 FR 16966), and any amendments thereto; section 504 of the Rehabilitation Act of 1973, as amended by the Rehabilitation Comprehensive Services and Developmental Disabilities Amendments of 1978; and provisions of the Age Discrimination Act of 1975 as amended. The cooperative shall not discriminate against employees under Title VII of the Civil Rights Act of 1964, as amended, or the Equal Pay Act of 1963 or Title VI of the Civil Rights Act of 1964 as administered by the Equal Employment Opportunity Commission, and will handle employee discrimination complaints as provided for in 28 CFR Part 42 and 29 CFR Part 1691. The United States shall have the right to enforce compliance with such statutes and regulations by suit or by any other action authorized by law. The cooperative shall submit a certification with its application that the above cited regulations and rules have been read and understood and that the cooperative will abide by them.

[51 FR 36924, Oct. 16, 1986, as amended at 53 FR 19884, June 1, 1988]

§ 1425.20 Records required.

(a) *Acquisitions.* An approved cooperative and its member cooperatives shall maintain a record which shows the quantity of commodity which is received from each of its members and nonmembers, the date received, the eligibility status for price support of each such quantity, the quality factors specified in the applicable regulations for the commodity (including class, grade, and quality, where applicable), and the quantity to which each applicable quality factor applies.

(b) *Dispositions.* The cooperative shall maintain a record which shows each quantity of commodity which is disposed of; and, if sold, the date sold and the price received; and the date removed for processing or shipped. Except as provided in paragraph (c) of this section, inventory shall be allocated in the following manner until the entire inventory in a particular pool is depleted:

(1) *Commodities which are processed.* The inventory of an eligible pool or ineligible pool or both eligible and ineligible pools shall be adjusted at the time the commodity is withdrawn from inventory for processing.

(2) *Commodities not processed.* The quantity of a commodity to be shipped shall be allocated to an eligible pool, an ineligible pool, or a combination of eligible and ineligible pools and the pool inventories shall be adjusted accordingly when the commodity is shipped.

(c) Records of eligible and ineligible pool dispositions need not be maintained separately so long as sales proceeds from such pools are allocated among the pools according to the quantity and quality of commodity included.

§ 1425.21 Inspection and investigation.

(a) *Retention of records.* The books, documents, papers, and records of the approved cooperative, member cooperatives, and subsidiaries, shall be maintained for a period of five years and shall be made available to CCC for inspection and examination at all reasonable times.

(b) *Examination.* CCC shall have the right at any time after an application is received, to examine all books, documents, papers, and determine whether the cooperative is operating or has operated in accordance with the regulations in this part, its articles of incorporation or articles association, bylaws, and agreements with producers, the representations made by the cooperative in its application for approval, and, where applicable, its agreements with CCC.

§ 1425.22 OMB control number assigned pursuant to Paperwork Reduction Act.

The information collection requirements contained in these regulations (7 CFR 1425) have been approved by the Office of Management (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0560-0040.

§ 1425.23 Appeals.

A cooperative may obtain reconsideration and review of determinations made under this part in accordance with the appeal regulations set forth at Part 780 of this title.

PART 1427—COTTON

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1427.1087 Exemption from requirements.
1427.1088 Contract fees.
1427.1089 OMB Control Numbers assigned pursuant to Paperwork Reduction Act.

Authority: 7 U.S.C. 1421, 1423 and 1444-1; 15 U.S.C. 714b and 714c; and sec. 501 of Pub. L. 99-198.

Subpart—Cotton Loan Program Regulations

Source: 45 FR 44294, July 1, 1980, unless otherwise noted.

§ 1427.1 Applicability.

(a) The regulations of this subpart are applicable to the 1989 and subsequent crops of upland cotton and extra long staple cotton and the 1988 crops of such cotton if such cotton is pledged as collateral for a price support loan which is extended in accordance with this Part. These regulations set forth the terms and conditions under which nonrecourse price support loans shall be made available by the Commodity Credit Corporation ("CCC") with respect to upland and extra long staple lint cotton. Additional terms and conditions are set forth in the note and security agreement which must be executed by a producer in order to receive such loans.

(b) Price support rates, the schedule or premiums and discounts, the schedule of micornaire discounts, loan service and related fees and the forms which are used in administering the price support program for a crop of upland and extra long staple cotton are available in State and county Agricultural Stabilization and Conservation Service ("ASCS") offices ("State and county offices," respectively). Price support rates shall be based upon the location of the approved warehouse in which the loan collateral is stored.

(c) Price support loans shall not be available with respect to any commodity produced on land owned or otherwise in the possession of the United States if such land is occupied without the consent of the United States.

[54 FR 11494, Mar. 21, 1989, and 54 FR 25445, June 15, 1989]

§ 1427.2 Administration.

(a) The price support program which is applicable to a crop of cotton shall be administered under the general supervision of the Administrator, ASCS, and shall be carried out in the field by State and county ASC committees.

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this part.

(c) The State committee shall take any action required by these regulations which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, an action taken by such county committee which is not in accordance with the regulations of this part; or

(2) Require a county committee to withhold taking any action which is not in accordance with the regulations of this part.

(d) No provision or delegation herein to a State or county committee shall preclude the Administrator, ASCS, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by the State or county committee.

(e) The Deputy Administrator, State and County Operations, ASCS, may authorize State or county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not affect adversely the operation of the price support program.

(f) A representative of CCC may execute price support loans and purchase agreements and related documents only under the terms and conditions determined and announced by CCC. Any such document which is not executed in accordance with such terms and conditions, including any purported execution prior to the date authorized by CCC, shall be null and void.

[54 FR 11494, Mar. 21, 1989, and 54 FR 25445, June 15, 1989]

§ 1427.3 Definitions.

(a) The definitions set forth in this section shall be applicable for all purposes of program administration. The terms defined in Parts 28, 719 and 1413 of this title shall also be applicable.

"Authorized LSA" means a person or firm that enters into a written agreement with CCC to act as a loan servicing agent for CCC in making and servicing individual Form A cotton loans. The authorized LSA may perform, on behalf of CCC, only those services which are specifically prescribed by CCC including:

(1) Preparing and executing loan documents;

(2) Disbursing loan proceeds;

(3) Handling the extension of loans as authorized by CCC;

(4) Accepting cotton loan repayments;

(5) Handling documents involved with forfeiture of cotton loan collateral to CCC; and

(6) Providing loan data to CCC for statistical purposes.

"Charges" means all fees, costs, and expenses incurred in insuring, carrying, handling, storing, conditioning, and marketing the cotton tendered to CCC for price support. Charges also include any other expenses incurred by CCC in protecting CCC's or the producer's interest in such cotton.

"Cotton" means, as defined in Part 1413 of this chapter, upland cotton and extra long staple cotton as applicable.

"Financial institution" means: (1) A bank in the United States which accepts demand deposits; and (2) an association organized pursuant to Federal or State law and supervised by Federal or State banking authorities.

"Lint cotton" means cotton which has passed through the ginning process.

"Loan clerk" means a person approved by CCC to assist producers in preparing loan documents.

"Seed cotton" means cotton which has not passed through the ginning process.

[54 FR 11495, Mar. 21, 1989, and 54 FR 25445, June 15, 1989]

§ 1427.4 Eligible producer.

(a) An eligible producer of a crop of cotton shall be an individual, partnership, association, corporation, estate, trust, State or political subdivision or agency thereof, or other legal entity which:

(1) Produces such a crop as a landowner, landlord, tenant, or sharecropper;

(2) Meets the requirements of this Part; and

(3) Meets the requirements of Parts 12, 718, and 1413 of this title.

(b) *Estates and trusts.* A receiver or trustee of an insolvent or bankrupt debtor's estate, an executor or an administrator of a deceased person's estate, a guardian of an estate of a ward or an incompetent person, and trustees of a trust estate shall be considered to represent the insolvent or bankrupt debtor, the deceased person, the ward or incompetent, and the beneficiaries of a trust, respectively, and the production of the receiver, executor, administrator, guardian, or trustee shall be considered to be the production of the person or estate represented by the executor or administrator. Loan documents executed by any such person will be accepted by CCC only if they are legally valid and such person has the authority to sign the applicable documents.

(c) *Eligibility of minors.* A minor who is otherwise an eligible producer shall be eligible for price support only if the minor meets one of the following requirements:

(1) The right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and the

applicable price support documents are signed by the guardian;

(3) Any note signed by the minor is cosigned by a financially responsible person; or

(4) A bond is furnished under which a surety guarantees to protect CCC from any loss incurred for which the minor would be liable had the minor been an adult.

(d)(1) Two or more producers may obtain a single joint loan with respect to cotton which is stored in an approved warehouse if the warehouse receipt which is pledged as collateral for the loan is issued jointly to such producers. The cotton in bale may have been produced by two or more eligible producers on one or more farms if the bale is not a repacked bale.

(2) If more than one producer executes a note and security agreement with CCC, each such producer shall be jointly and severally liable for the violation of the terms and conditions of the note and security agreement and the regulations set forth in this part. Each such producer shall also remain liable for repayment of the entire loan amount until the loan is fully repaid without regard to such producer's claimed share in the cotton pledged as collateral for the loan. In addition, such producer may not change the note and security agreement with respect to the producer's claimed share in such cotton, or loan proceeds, after execution of the note and security agreement by CCC.

(e) Loans may be made to a warehouseman who, in the capacity of a producer, tenders to CCC warehouse receipts issued by such warehouseman on cotton produced by such warehouseman only in those States where the issuance and pledge of such warehouse receipts are valid under State law.

(f) A cooperative marketing association which has been approved in accordance with Part 1425 of this chapter may obtain price support on behalf of the members of the cooperative who are eligible to receive price support with respect to a crop of cotton. For purposes of this subpart, the term "producer" includes an approved cooperative marketing association.

(g) Except as may otherwise be provided in this part, a producer shall not delegate to any person (or any agent or representative of such person), except to a farm manager, who has an interest in storing, processing, or merchandising cotton which is eligible to receive price support in accordance with this part the authority to exercise on behalf of the producer any of the producer's rights which arise in accordance with this subpart.

[45 FR 44294, July 1, 1980, as amended at 54 FR 11495, Mar. 21, 1989, and 54 FR 25445, June 15, 1989]

§ 1427.5 General eligibility requirements.

Cotton produced by eligible producers is eligible cotton if it meets the following requirements:

(a) A producer must, unless otherwise authorized by CCC, request price support at the county office which, in accordance with Part 719 of this title, is responsible for administering programs for the farm on which the cotton was produced. An approved cooperative marketing association must, unless otherwise authorized by CCC, request price support at a servicing agent bank approved by CCC. All note and security agreements and related documents necessary for the administration of the price support programs shall be determined by CCC and are available at State and county offices. In order to receive price support for a crop of cotton, a producer must execute a note and security agreement on or before May 31 of the year following the year in which such crop is normally harvested. A Form CCC Cotton A must be signed by the producer or the producer's agent and mailed or delivered to the county office or an authorized LSA within 15 days after the producer signs the Form CCC Cotton A and within the period of loan availability.

(b)(1) Cotton must be tendered to CCC by an eligible producer and must:

(i) Be in existence and in good condition at the time of disbursement of loan proceeds;

(ii) Be a grade and staple length specified in:

(A) The schedule of premiums and discounts for upland cotton or

(B) The schedule of loan rates for extra long staple cotton and must be represented by a warehouse receipt meeting the requirements of § 1427.12;

(iii) Not be false-packed, water-packed, mixed-packed, reginned, or repacked and:

(A) Upland cotton must not have been reduced more than two grades because of preparation; and

(B) Extra long stable cotton must have been ginned on a roller gin, must have been produced in a county designated as suitable for the production of such cotton, must not have a micronaire reading of 2.6 or less, and must not have been reduced in grade for any reason;

(iv) Not be compressed to universal density where side pressure has been applied or to high density at a warehouse;

(v) Not have been sold, nor any sales option on such cotton granted, to a buyer under a contract which provides that the buyer may direct the producer to pledge the cotton to CCC as collateral for a price support loan; and

(vi) Not have been previously sold and repurchased; or pledged as collateral for a CCC price support loan and redeemed.

(2) Each bale of cotton must:

(i) Weigh not less than 325 pounds net weight;

(ii) If compressed to standard or higher density either at warehouse or at a gin, have not less than eight bands;

(iii) Be packaged in materials which meet specifications adopted and published by the Joint Cotton Industry Bale Packaging Committee (JCIBPC), sponsored by the National Cotton Council of America, for bale coverings and bale ties which are identified and approved by the JCIBPC as experimental packaging materials. Heads of bales must be completely covered. Copies of the 1989 Specifications for Cotton Bale Packaging Materials published by the JCIBPC which are incorporated by reference are available upon request at the county ASCS office and at the following address: Joint Cotton Industry Bale Packaging Committee, National Cotton Council of America, P.O. Box 12285, Memphis, Tennessee 38112. Information with respect to experimental packaging material may be obtained from JCIBPC. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a);

(iv) Be ginned by a ginner:

(A) Who has entered the tare weight of the bale (bagging and ties used to wrap the bale) on the gin bale tag, and

(B) Who has entered into CCC-809, Cooperating Ginners' Bagging and Bale Ties Certification and Agreement, or certified that the bale is wrapped with bagging and bale ties meeting the requirements of paragraph (b)(2)(iv)(A) of this section.

(c)(1) To be eligible to receive price support, a producer must have the beneficial interest in the cotton which is pledged as collateral. The producer must always have had the beneficial interest in the cotton unless, before the cotton was harvested, the producer and a former producer whom the producer tending the cotton to CCC has succeeded had such an interest in the cotton. Heirs who succeed to the beneficial interest of a deceased producer or who assume such producer's obligations under an existing loan shall be eligible to receive price support whether succession to the cotton occurs before or after harvest as long as the heir otherwise complies with the provisions of this Part. Such succeeding producer must assume a substantial interest in, and responsibility for, the production of the cotton. Mere purchase or inheritance of a crop prior to harvest without acquisition of any additional interest in the farm on which the crop is produced shall not constitute succession of a beneficial interest.

(2) A producer shall not be considered to have divested the beneficial interest in the cotton if the producer enters into a contract to sell or gives an option to buy the cotton, if under the contract or option the producer retains control, risk of loss and title to the cotton subject to such agreement, and retains control of the production of the cotton. Cotton obtained by purchase shall not be eligible to be tendered to CCC for price support.

(3) If price support is made available to producers through an approved

marketing cooperative in accordance with Part 1425 of this chapter, the beneficial interest in the cotton must always have been in the producer-member who delivered the cotton to the cooperative except as otherwise provided in this subsection. Cotton delivered to such a cooperative shall not be eligible to receive price support if the producer-member who delivered the cotton does not retain the right to share in the proceeds from the marketing of the cotton as provided in Part 1425 of this chapter.

(d) If the person tendering cotton for a loan is a landowner, landlord, tenant, or sharecropper, the cotton must be such person's separate share of the crop and must not have been acquired by such person directly or indirectly from a landowner, landlord, tenant, or sharecropper or have been received in payment of fixed or standing rent.

(e) Each bale of upland cotton sampled by the warehouseman upon initial receipt which has not been sampled by the ginner must not show more than one sample hole on each side of the bale. If more than one sample is desired when the bale is received by the warehouseman, the sample shall be cut across the width of the bale, broken in half or split lengthwise, and otherwise drawn in accordance with AMS dimension and weight requirements. This requirement will not prohibit sampling of the cotton at a later date if authorized by the producer.

[45 FR 44294, July 1, 1980, as amended by Amdt. 6, 50 FR 52215, Dec. 23, 1985; 54 FR 11495, Mar. 21, 1989, and 54 FR 25445, June 15, 1989]

§ 1427.6 Program availability and disbursement of price support loans.

(a) *Where to request a loan.* (1) A producer may request price support:

(i) At the local county ASCS office, or

(ii) From an authorized LSA.

(2) An authorized agent which has an agreement with CCC and which is designated by producers to obtain loans on their behalf may obtain such loans through a central county ASCS office designated by CCC.

(3) An approved cooperative marketing association must request loans:

(i) At a servicing bank approved by CCC, or

(ii) At the county ASCS office for the county in which the principal office of the cooperative is located unless the State ASC committee designates some other county ASCS office as the office where such association must request price support.

(b) *Disbursement of loans.* Disbursement of loans to individual producers may be made by: (1) Local county ASCS offices, (2) authorized LSAs, or by (3) central county ASCS offices (when designated by CCC to provide centralized service to a person or firm which has been designated as a producer's agent and which has entered into a written agreement with CCC). Loans may be disbursed by approved servicing banks to approved cooperative marketing associations. Service charges and cotton research and promotion fees, when required by the provisons of 7 CFR 1205.500 *et seq.*, will be deducted from the loan proceeds. If the producer so elects, loan clerk fees may be deducted from the loan proceeds instead of the loan clerk being paid in cash. The loan documents shall not be presented for disbusement unless the commodity covered by the mortgage or pledge of security is in existence and in good condition. If the commodity was not in existence and in good condition at the time of disbursement, the total amount disbursed under the loan shall be refunded promptly.

(c) *Program availability.* Loans will be available to eligible producers on cotton represented by warehouse receipts which is stored at CCC approved warehouses.

[Amdt. 6, 50 FR 52215, Dec. 23, 1985, as amended at 54 FR 11496, Mar. 21, 1989, and 54 FR 25445, June 15, 1989]

§ 1427.7 Maturity of loans.

(a) *Time of maturity and extension of loans.* (1) Loans on Form A cotton as referred to in § 1427.11(a) (and loan advances to cotton cooperative marketing associations on Form G cotton) mature on the last day of the 10th calendar month from the first day of the month in which the loan (or loan advance) is made, or upon such earlier date as CCC may make demand for payment, except that whenever such data falls on a nonworkday for county ASCS offices, the date of maturity shall be the next workday. Upland cotton loans may at the producer's request be extended for an additional eight (8) months during the 10th month of the initial loan provided the average spot market price for Strict Low Middling $1\frac{1}{16}$ inch cotton during the ninth month of the loan did not exceed 130 percent of the average spot market price for Strict Low Middling cotton for the preceding 36 months. CCC may, by public announcement, extend the time for repayment of the loan indebtedness or carry the loan in a past due status.

(2) Beginning with the 1989 crop of upland cotton, if a producer's price support loan is extended for 8 months in accordance with paragraph (a)(1) of this section and the loan collateral is thereafter forfeited to CCC:

(i) All storage costs associated with the storage of the forfeited cotton, beginning with the first month of such extension, shall be paid to CCC by the producer; and

(ii) The producer shall pay to CCC a handling fee of $1.00 per bale.

(b) *When CCC takes title to commodity.* On or after maturity and nonpayment of the note, title to the cotton shall, at CCC's election, without a sale thereof, vest in CCC, and CCC shall have no obligation to pay for any market value which such cotton may have in excess of the amount of the loan, plus interest and charges. In the event the producer has made a fraudulent representation in the loan documents or in obtaining the loan, the producer shall be personally liable for any amount by which the amount due on the loan exceeds the market value of the cotton securing the loan as of the date title vests in CCC, as determined by CCC.

(c) *Sale by CCC.* Upon maturity and nonpayment of a note, CCC is authorized without notice to the producer to sell, transfer, and deliver the cotton, or documents evidencing title thereto, at such time, in such manner, and upon such terms and conditions as CCC may determine, at any cotton exchange or elsewhere, or through any agency, at public or private sale, for immediate or future delivery, and without demand, advertisement, or notice of the time and place of sale or adjournment thereof or otherwise; and, upon such sale, CCC may become the purchaser of the whole or any part of such cotton at its market value, as determined by CCC. Any overplus remaining from the proceeds received therefrom, after deducting from such proceeds the amount of the loan, interest, and charges, shall be paid to the producer or to the producer's personal representative without right of assignment to or substitution of any other person. In the event the producer has made a fraudulent representation in the loan documents or in obtaining the loan, the proceeds received from the sale of the cotton shall be credited by CCC against the amount due on the loan, and the producer shall be personally liable for any balance due on the loan.

(d) *Small amounts.* To avoid administrative costs of making small payments and handling small accounts, amounts of $3 or less will be paid to the producer only upon the producer's request. Deficiencies of $3 or less, including interest, may be disregarded unless demand for payment is made by CCC.

[45 FR 44294, July 1, 1980, as amended at 54 FR 41239, Oct. 6, 1989]

§ 1427.8 Amount of loan.

(a) Loans will be made on the net weight of the cotton as shown on the warehouse receipt, except that in the case of a bale which has a net weight of more than 600 pounds, the weight to be used in determining the amount of the loan on the bale shall be 600 pounds. Cotton pledged as collateral for loans on the basis of reweights will not be accepted if CCC determines that such reweights reflect an increase in weight due to the absorption of moisture. CCC will deduct from the current weight of the bale any estimated weight gained while in storage.

(b)—(c) [Reserved]

(d) The amount of the loan for each bale will be determined by multiplying the net weight of the bale, as determined under paragraph (a) of this section, by the applicable loan rate and subtracting any unpaid warehouse receiving charges, any warehouse storage charges in excess of 60 days as of the date of tender to CCC, as provided in § 1427.12(c), and any unpaid charge for furnishing new bale ties as prescribed in § 1427.12(c). CCC will not increase the amount of the loan made with respect to any bale of cotton as a result of a redetermination of the quality of the bale after it is tendered to CCC, except that if it is established to the satisfaction of CCC that a bona fide error was made with respect to the weight of the bale or the loan rate for the bale as specified on the Form A-1, such error may be corrected.

(e) *Plan A and Plan B.* (1) If CCC determines that the prevailing world market price for upland cotton, adjusted to United States quality and location, is less than the loan level established with respect to a crop of upland cotton, CCC shall implement the provisions of paragraph (e)(2) or (3) of this section.

(2) *Plan A.* CCC may announce a loan repayment level with respect to a crop of upland cotton at not less than 80 percent of the loan level established for such crop. The loan level and the loan repayment level shall be announced concurrently.

(3) *Plan B.* (i) If CCC does not elect to implement Plan A as specified in paragraph (e)(2) of this section, CCC shall, except as provided in paragraph (e)(3)(i)(B) of this section, permit producers to repay a loan at a level that is the lesser of (A) the loan level established for such crop, or (B) the prevailing world market price for upland cotton, as determined by CCC.

(ii) With respect to the 1987 through 1990 crops of upland cotton, if the world market price for upland cotton, as determined by CCC, is less than 80 percent of the loan level established for such crop, CCC may permit a producer to repay a loan at a level, which is not in excess of 80 percent of such loan level.

(f) *Payment to first handlers of cotton.* (1) If CCC determines during the period August 1, 1986, through July 31, 1991, that either program implemented in accordance with paragraph (e) of this section: (i) Fails to make United States upland cotton fully competitive in world markets; and (ii) the prevailing world market price for upland cotton, as determined by CCC, is less than the current loan repayment rate for upland cotton, CCC shall issue to first handlers of cotton, subject to such terms and conditions as CCC may prescribe, commodity certificates in accordance with Part 1470 of this title.

(2) For purposes of this paragraph, a first handler of cotton is a person regularly engaged in the buying or selling of upland cotton who has entered into an agreement with CCC participate in the program set forth in this section.

(3) The value of commodity certificates issued in accordance with this section shall be based upon the difference between:

(i) The current loan repayment level for upland cotton and

(ii) The prevailing world market price for upland cotton, as determined by CCC.

[45 FR 44294, July 1, 1980, as amended at 51 FR 8463, Mar. 11, 1986; 51 FR 36905, Oct. 16, 1986; 54 FR 11496, Mar. 21, 1989, and 54 FR 25445, June 15, 1989]

§ 1427.9 Classification and micronaire readings of cotton.

(a) References made to "classification" in this subpart shall include micronaire readings. All cotton tendered for loan must be classed by a USDA, AMS, Marketing Services Office (referred to in this subpart as "the Marketing Services Office") and tendered on the basis of such classification. A Cotton Classification Memorandum Form 1 showing the classification of a bale must be based upon a representative sample drawn from the bale in accordance with instructions to samplers drawing samples for organized improvement groups under the Smith-Doxey program. If the producer's cotton has not been sampled for a Form 1 classification, the warehouse shall sample such cotton and forward the samples to the Marketing Services Office serving the district in which the cotton is located. Such warehouse must be licensed by the Agriculture

Marketing Service, U.S. Department of Agriculture, to draw samples for submission to the board. If a sample has been submitted for a Form 1 or Form A classification, another sample shall not be drawn and forwarded to a board except for a review classification. Where review classification is not involved, if through error or otherwise two or more samples from the same bale are submitted for classification, the loan rate shall be based on the classification having the lower loan value. The classification Form 1 or Form A must be dated not more than 15 days prior to the date the warehouse receipt was issued (State committees may in arid regions extend this period to not to exceed 30 days prior to the date the warehouse receipt was issued upon determining that such extension will not result in reduction in the grade of the cotton during the extension period), otherwise a new sample must be drawn and a review classification based on the new sample will be required. If a Form 1 or Form A review classification is obtained, the loan value of the cotton represented thereby will be based on such review classification.

(b) The applicable classification charge shall be collected from the producer by the warehouse for all cotton for which samples are submitted to a board for a Form A review classification. The board will bill the warehouse at the end of each month for such charges. Payment of these bills shall be made by check or money order payable to "Commodity Credit Corporation" and mailed to the Kansas City Commodity Office.

§ 1427.10 Approved storage.

Except as provided otherwise in § 1427.19, cotton will be accepted as security for loans only if stored at warehouses approved by CCC. When the operator of a warehouse receives notice from CCC that a loan has been made by CCC on a bale of cotton, the operator shall, if such cotton is not stored within the warehouse, promptly place such cotton within the warehouse. Persons desiring approval of their facilities should communicate with the Kansas City Commodity Office. The names of approved warehouses may be obtained from the Kansas City Commodity Office or from State or county offices. Storage charges paid by a producer to CCC as security for a loan will not be refunded by CCC. If cotton is redeemed from the loan, the person removing the cotton from storage shall pay all unpaid warehouse charges at the established tariff rate.

§ 1427.11 [Reserved]

§ 1427.12 Warehouse receipt and insurance.

(a) *General.* Producers may obtain loans on cotton represented by warehouse receipts only if the warehouse receipts are negotiable machine card-type warehouse receipts, are issued by CCC approved warehouses, provide for delivery of the cotton to bearer or are properly assigned by endorsement in blank, so as to vest title in the holder of the receipt, and otherwise are acceptable to CCC. The warehouse receipt must contain the tag number (warehouse receipt number), must show that the cotton is covered by fire insurance, and must be dated on or prior to the date the producer signs the note. If a bale is stored at the origin warehouse (the warehouse to which the bale was first delivered for storage after ginning), the warehouse receipt must contain the gin bale number. If a bale has been moved from the origin warehouse, the warehouse receipt shall, in lieu of the gin bale number, contain the tag number and identification of the origin warehouse. Open yard endorsement, if any, on the warehouse receipt must have been rescinded with the legend "open yard disclaimer deleted" with appropriate signature of the warehouseman or the authorized representative. Block warehouse receipts will be accepted when authorized by CCC under the following conditions:

(1) The owner of the warehouse issuing the block warehouse receipt shall also own the cotton represented by the block warehouse receipt, and

(2) The warehouse shall not be federally licensed.

(b) *Weight.* Each receipt must set out in its written or printed terms the tare and the net weight of the bale represented thereby. The net weight shown on the warehouse receipt shall be the difference between the gross weight as determined by the warehouse at the warehouse site and the tare weight, except that the warehouse receipt may show the net weight established at a gin (1) in case the gin is in the immediate vicinity of the warehouse and is operated under common ownership with such warehouse or in any other case in which the showing of gin weights on the warehouse receipts is approved by CCC, and (2) if the showing of gin weights on the warehouse receipts is permitted by the licensing authority for the warehouse. The tare shown on the receipt shall be the tare furnished to the warehouse by the ginner or entered by the ginner on the gin bale tag. A warehouse receipt reflecting an alteration in tare or net weight will not be accepted by CCC unless it bears, on the face of the receipt, the following legend or similar wording approved by CCC, duly executed by the warehouse or an authorized representative of the warehouse:

Corrected (tare or net) weight ————————
(Name of warehouse) ——————————
By ——————————————————
Date ——————————————————

Alterations in other inserted data on the receipt must be initaled by an authorized representative of the warehouse.

(c) *Storage and receiving charges.* If warehouse storage charges have been paid, the receipt must be stamped or otherwise noted to show that date through which the storage charges have been paid. For receipts showing accrued storage charges in excess of 60 days as of the date of tender to CCC, the loan amount will be reduced for each month of unpaid storage or fraction thereof in excess of 60 days by the monthly storage charge specified in the storage agreement between the warehouse and CCC. If warehouse receiving charges have been paid or waived, the receipt must be stamped or otherwise noted to show such fact. If the receipt does not show that receiving charges have been paid or waived, the loan amount will be reduced by the amount of the receiving charges specified in the storage agreement: *Provided, however,* That except for bales stored in the States of Alabama, Florida, Georgia, North Carolina, South Carolina, and Virginia, if receiving charges due on the bale include a charge, if any, for a new set of ties for compressing flat bales tied with ties which cannot be reused, the warehouse receipt must show such receiving charges and state: "receiving charges due include charge for new set of ties," or similar notation, and the loan amount will be reduced by the amount of the receiving charges shown on the warehouse receipt (this will be the amount payable by CCC if it pays for receiving, notwithstanding the provisions of the storage agreement). In any case where the loan amount is reduced by unpaid storage or receiving charges the charges will be paid to the warehouseman by CCC after loan maturity if the cotton is not redeemed from the loan, or as soon as practicable after the cotton is ordered shipped by CCC or destroyed by fire while in loan status. Except for bales stored in the States of Alabama, Florida, Georgia, North Carolina, South Carolina, or Virgina, if the bale is stored at a warehouse which does not have compress facilities or arrangements, and if the bale ties are not suitable for reuse when the bale is compressed, the warehouse receipt must show this fact, and the loan amount will be reduced by the charge which will be assessed by the nearest compress in line of transit for furnishing new bale ties.

(d) *Rail shipments.* If the bale was received by rail, the receipt must be stamped or otherwise noted to show such fact.

(e) *Compression.* The warehouse receipt must show the compression status of the bale, i.e., flat, modified flat, standard, gin standard, gin universal, or warehouse universal density. If the compression charge has been paid, or if the warehouse claims no lien for such compression, the receipt must be stamped or otherwise noted to show such fact.

§ 1427.13 Liens.

If there are any liens or encumbrances on the commodity, waivers that fully protect the interest of CCC must be obtained even though the liens or encumbrances are satisfied from the loan proceeds. No additional liens or encumbrances shall be placed on the commodity after the loan is approved.

[54 FR 11496, Mar. 21, 1989, and 54 FR 25445, June 15, 1989]

§ 1427.14 Fees, charges and interest.

(a) A producer shall pay a nonrefundable loan service fee to CCC or, if applicable, to an authorized LSA, at a rate determined by CCC. Any such fee shall be in addition to any loan clerk fee paid to a loan clerk in accordance with paragraph (b) of this section.

(b) Loan clerks may only charge fees for the preparation of loan documents at the rate determined by CCC.

(c) Interest which accrues with respect to a loan shall be determined in accordance with Part 1405 of this chapter. Except with respect to called loans, loans which have not been repaid by the maturity date shall accrue interest in accordance with Part 1403 of this chapter beginning the day after the maturity date of the loan. With respect to called loans, interest shall accrue in accordance with Part 1403 of this chapter beginning on the required settlement date.

[54 FR 11496, Mar. 21, 1989, and 54 FR 25445, June 15, 1989]

§ 1427.15–1427.16 [Reserved]

§ 1427.17 Setoffs.

(a) If any installment(s) on any loan made available by CCC on farm-storage facilities or drying equipment is due and payable under the provisions of the note evidencing such loan out of any amount due the producer under the program provided for in this subpart, the producer must designate CCC as payee of such amount to the extent of such installment(s), but not to exceed that portion of the amount remaining after deduction of clerk fees, service charges, research and promotion fees, and amounts due prior lienholders.

(b) If the producer is indebted to CCC, or if the producer is indebted to any other agency of the United States and such indebtedness is listed on the county claim control record, amounts due the producer under the program provided for in this subpart, after deduction of amounts payable under paragraph (a) of this section shall be applied to such indebtedness as provided in the Secretary's Setoffs and Withholding regulations, Part 13 of this title and any amendments thereto.

(c) Compliance with the provisions of this section shall not deprive the producer of any right the producer otherwise has to contest the justness of the indebtedness involved in the setoff action, either by administrative appeal or by legal action.

§ 1427.18 Special procedure where note amount advanced.

(a) *Purpose.* This special procedure is provided to assist persons or firms which in the course of their regular business of handling cotton for producers have made advances to eligible producers on eligible cotton to be placed under loan and desire to obtain credit at a financial institution for the amounts advanced. A financial institution which has made advances to eligible producers on eligible cotton may also obtain reimbursement for the amounts advanced under this procedure.

(b) *Eligible documents.* This special procedure shall apply only to loan documents covering cotton on which a person or firm has advanced to the producers (including payments to prior lienholders and other creditors) the note amounts shown on the Form A, except for authorized loan clerk fees, the research and promotion fee collected for transmission to the Cotton Board, and CCC loan service charges, and shall apply only if such person or firm is entitled to reimbursement from the proceeds of the loans for the amounts advanced and has been authorized by the producer to deliver the loan documents to a county ASCS office for disbursement of the loans.

(c) *Delivery of notes to county offices.* Each Form A and related documents shall be mailed or delivered to a county ASCS office and shall show the entire proceeds of the loans, except for CCC loan service charges, for disbursement to (1) the financial institution which is to allow credit to the person or firm which made the loan advances or to such financial institution and such person or firm as joint payees, or (2) the financial institution which made the loan advances to the producers. When received in a county ASCS office (or postmarked, if mailed) warehouse receipts and loan documents must reflect not more than 60 days accrued storage, or the loan amount must be reduced by the excess storage as specified in § 1427.12. The documents shall be accompanied by Form CCC-825, transmittal schedule of Form A Cotton Loans, in original and two copies, numbered serially for each county office by the financial institution. The Form CCC-825 shall show the amounts invested by the financial institution in the loans, which shall be the amounts of the notes minus the amounts of CCC loan service charges shown on the notes. Upon receipt of the loan documents and Form CCC-825, the county office will stamp one copy of the Form CCC-825 to indicate receipt of the documents and return this copy to the financial institution.

(d) *Disbursement of loans.* County ASCS offices will review the loan documents prior to disbursement and will return to the financial institution any documents determined not to be acceptable because of errors or illegibility. County ASCS offices will disburse the loans for which loan documents are acceptable by issuance of one draft to the payee indicated on the Form A and will mail the draft to the address shown for such payee on the Form A with a copy of Form CCC-825. The Form CCC-825 will show the date of disbursement by a county ASCS office and amount of interest earned by the financial institution.

(e) *Investment of funds by the financial institution.* The financial institution shall be deemed to have invested funds in the loans as of the date loan documents acceptable to CCC were delivered to a county ASCS office or, if received by mail, the date of mailing as indicated by postmark or the date of receipt in a county ASCS office if no postmark date is shown. Patron postage meter date stamp will not be recognized as a postmark date.

(f) *Basis of computing interest earned.* Interest will be computed on the total amount invested by the financial institution in the loan represented by accepted loan documents from and including the date of investment of funds by the financial institution to, but not including, the date of disbursement by a county ASCS office.

(g) Interest will be paid at the rate in effect for CCC loans as provided in Part 1405 of this chapter.

(h) *Payment of interest.* Interest earned by the financial institution in the investment in loans disbursed during a month will be paid by county ASCS offices after the end of the month.

[45 FR 44294, July 1, 1980, as amended at 54 FR 11497, Mar. 21, 1989, and 54 FR 25445, June 15, 1989]

§ 1427.19 Reconcentration of cotton.

(a) *As cotton enters loan.* Loans on cotton to be reconcentrated shall be available only on cotton received at CCC approved warehouses in areas where there is a shortage of storage space and the local warehouse certifies such fact to CCC. A producer who desires to obtain a loan on cotton to be reconcentrated under the provisions of this paragraph shall request such reconcentration and present the same documents as required for a regular loan. The Forms A-1 and warehouse receipts covering cotton to be reconcentrated must show the reconcentration order number furnished by the county office or authorized LSA under which the cotton will be shipped. The county office or authorized LSA shall arrange for reconcentration of the cotton under the direction of the Kansas City Commodity Office. Any fees, cost, or expenses incident to such actions shall be charges against the cotton. That office shall obtain new warehouse receipts, allocate to individual bales shipping and other charges incurred against the cotton, and return new warehouse receipts and reconcentration charges applicable to each bale to the county office or authorized LSA. Such reconcentration charges shall be added to bale loan amounts and must be repaid for bales redeemed from loan.

(b) *Cotton under loan.* CCC may under certain conditions, before loan maturity, compress, store, insure, or reinsure the cotton against any risk, or otherwise handle or deal with the cotton as it may deem necessary or appropriate for the purpose of protecting the interest therein of the producer or CCC. CCC may also move the cotton from one storage point to another with the written consent of the producer or borrower and upon the request of the local warehouse and certification that there is congestion and lack of storage facilities in the area: *Provided, however,* That if CCC determines such loan cotton is improperly warehoused and subject to damage, or if any of the terms of the loan agreement are violated, or if carrying charges are substantially in excess of the average of carrying charges available elsewhere and the local warehouse, after notice, declines to reduce such charges, such written consent need not be obtained. Any fees, costs, or expenses incident to such actions shall be charges against the cotton. After the cotton is reconcentrated, the Kansas City Commodity Office shall allocate shipping and other charges incurred against the cotton and return new warehouse receipts and reconcentration charges applicable to each bale to the county office or authorized LSA. Such reconcentration charges shall be added to bale loan amounts and must be repaid for bales redeemed from loans.

[45 FR 44294, July 1, 1980, as amended by Amdt. 6, 50 FR 52216, Dec. 23, 1985]

§ 1427.20 Custodial offices.

Forms A and A-1, collateral warehouse receipts, cotton classification memoranda, and related documents will be maintained in custody of the local county ASCS office, authorized LSA, central county ASCS office, or any financial institution (defined in §1427.2 and approved by CCC), whichever disbursed the loan evidenced by such documents.

[Amdt. 6, 50 FR 52216, Dec. 23, 1985]

§ 1427.21 Liability of the producer.

(a)(1) If a producer makes any fraudulent representation in obtaining, maintaining, or settling a loan or disposes of or moves the loan collateral without the approval of CCC, such loan shall be payable upon demand by CCC. The producer shall be liable for:

(i) The amount of the loan;

(ii) Any additional amounts paid by CCC with respect to the loan;

(iii) All other costs which CCC would not have incurred but for the fraudulent representation or the unauthorized disposition or movement of the loan collateral; and

(iv) The payment of such amounts may not be satisfied by the forfeiture of loan collateral to CCC of commodities with a settlement value that is less than the total of such amounts.

(2)(i) If a producer has made any such fraudulent representation or if the producer has disposed of, or moved, the loan collateral, the value of such collateral shall be determined by CCC, and shall be the lower of:

(A) The market value of the commodity at the close of the market on the final date for repayment; or

(B) The loan settlement value of the commodity.

(ii) Notwithstanding the provisions of paragraphs (a)(2) of this section, if CCC sells the loan collateral in order to determine the market value of the commodity, the lower of:

(A) The sales price of the commodity less any costs incurred by CCC in completing the sale; or

(B) The loan settlement value of the commodity.

(b) If the amount disbursed under a loan, or in settlement thereof, exceeds the amount authorized by this Part, the producer shall be liable for repayment of such excess, plus interest. In addition, the commodity pledged as collateral for such loan shall not be released to the producer until such excess is repaid.

(c) If the amount collected from the producer in satisfaction of the loan is less than the amount required according to this Part, the producer shall be personally liable for repayment of the amount of such deficiency.

(d) In the case of joint loans, the personal liability for the amounts specified in this section shall be joint and several on the part of each producer signing the note.

[54 FR 11497, Mar. 21, 1989, and 54 FR 25445, June 15, 1989]

§ 1427.22 Repayment of loans.

(a)(1) If a producer desires to redeem one or more bales of cotton pledged as collateral for a loan, the producer may receive the warehouse receipts (and the classification memoranda applicable to such cotton, if requested) at the local county ASCS office upon payment of the loan, interest, and charges applicable to the bales of cotton being redeemed. The producer may also request that the warehouse receipts (and classification memoranda) be forwarded to a bank for payment, in which case the amount of the loan, interest, and charges must be paid to the bank within 5 business days after the documents are received by the bank. Repayments will not be accepted after CCC acquires the cotton. All charges assessed by the bank to which the receipts are sent must be paid by the producer.

(2)(i) Notwithstanding the provisions of paragraph (a)(1) of this section, CCC may allow producers to redeem one or more bales of cotton pledged as collateral for a loan by paying to CCC an amount less than the total of the principal amount of the loan, interest and other charges as may be set forth under the terms and conditions specified by CCC at the time the producer redeems the commodity pledged as collateral for such loan.

(ii) Beginning with the 1989 crop of upland cotton, if a loan is repaid and such loan has not been extended in accordance with § 1427.7; the cotton pledged as collateral for such loan is not acquired by the producer through the use of commodity certificates in accordance with part 1470 of this chapter; and the adjusted world price determined in accordance with 7 CFR part 26 is:

(A) Below the loan rate for base quality (Strict Low Middling 1$\frac{1}{16}$ inch, micronaire 3.5 through 4.9) upland cotton, CCC will not require the payment of any interest which has accrued with respect to such loan and will pay all of the warehouse charges which have accrued with respect to the cotton pledged as collateral for such loan;

(B) Above the base loan rate by less than the sum of the accrued interest and warehouse charges, CCC will not require the payment of that portion of the accrued interest and will pay that portion of the accrued warehouse charges that are determined to be necessary to permit the loan collateral to be redeemed at the adjusted world price; or

(C) Above the base loan rate by as much as or more than the sum of the accrued interest and warehouse charges, CCC will require the payment of all accrued interest and will not pay any of the accrued warehouse charges. In such case, the loan may be repaid at the loan rate plus accrued interest and any warehouse charges previously paid by CCC.

(3) The producer may request that the warehouse receipts and classification memoranda be forwarded to a bank for payment, in which case the principal amount of the loan, together with any applicable interest and other charges, must be paid after the documents are received by the bank. All charges assessed by the bank to which the receipts are sent must be paid by the producer.

(4) Repayment of loans will not be accepted after CCC acquires title to the cotton.

(b)(1) A producer, by filing with ASCS an ASC Form-211 or other power of attorney document approved by CCC, may designate another person to act on behalf of the producer for the purpose of:

(i) Redeeming the producer's cotton which is pledged as collateral,

(ii) Selling the producer's equities in the cotton pledged as loan collateral, or

(iii) Executing Forms CCC-813, release of Warehouse Receipts "Form 813".

(2) In order to redeem cotton pledged as collateral for a loan or to execute a Form 813 a person designated by the producer in accordance with

the subsection must file with the county ASCS office, or the authorized LSA, whichever disbursed the loan, the original or facsimile of the power of attorney or a copy certified by a notary public as a true and correct copy.

(3) The attorney-in-fact redeeming a producer's cotton under authority of a power of attorney, including a person who has a power of attorney through execution of a Form 813, shall not:

(i) Purchase any such cotton redeemed from a CCC cotton loan or purchase the producer's equity in such cotton for the attorney-in-fact's own account or as agent for others; or

(ii) Sell any such cotton or equities in such cotton to any person by whom the attorney-in-fact is employed or who has the right to control or direct the attorney-in-fact's sale of such redeemed cotton or the equities in such cotton.

(4) The attorney-in-fact shall not adopt any scheme or device which tends to defeat the purpose of these regulations or the cotton program.

(5) If the attorney-in-fact holds power of attorney from more than one producer, the attorney-in-fact may not:

(i) Pool the producer's cotton or the proceeds therefrom; or

(ii) Make settlement with such producers on a pool basis upon sale of the cotton or the equities therein.

(6) The attorney-in-fact shall make an accounting to each producer for the proceeds of each bale of the producer's cotton which the attorney-in-fact redeems and sells and each equity which the attorney-in-fact has a valid annual marketing agreement with such producers authorizing the attorney-in-fact to pool the cotton or the proceeds therefrom.

(c)(1) A producer or the producer's authorized agent may enter into an agreement with a person or persons to redeem the producer's cotton and may authorize the release of the applicable warehouse receipts to such person or transferee (the "buyer") by executing a Form 813. If the buyer executes and files the Form 813 with the loan originating office, the buyer shall be obligated to redeem the cotton specified on such form on or before the maturity date of the loan. CCC will deliver to the buyer the warehouse receipts and, if requested, the classification memoranda covering the cotton upon the repayment of the loan principal together with any applicable interest and other charges at the loan originating office.

(2) If the loan documents are sent to a bank for collection, repayment of the loan, together with any applicable interest and other charges, must be made within 5 business days after the documents are received by the bank. All charges assessed by the bank to which the documents are sent must be paid by the buyer. Redemptions will not be permitted after the maturity date of the loan. Upon the failure of the buyer to redeem all such cotton pledged as loan collateral:

(i) Title to the cotton shall, at CCC's election and without a sale thereof, immediately vest in CCC, and there shall be no obligation on the part of CCC to pay for any market value which such cotton may have in excess of the principal amount of the loan thereon, together with any applicable interest and other charges. The buyer shall be personally liable for any amount by which the amount due on the loan on such cotton exceeds the market value of the cotton as of the date title to the cotton vests in CCC, as determined by CCC.

(ii) CCC may, at CCC's election and without notice to the buyer, sell, transfer and deliver the cotton or documents evidencing title thereto, at such time, and in such manner, and upon such terms and conditions as CCC may determine, at any cotton exchange or elsewhere, or through any agency, at public or private sale, for immediate or future delivery, and without demand, advertisement, or notice of the time and place of sale or adjournment thereof or otherwise. Upon such sale, CCC may become the purchaser of the whole or any part of such cotton at its market value, as determined by CCC. If the proceeds from the sale do not cover the principal amount of the loan on such cotton, together with any applicable interest and other charges, the buyer shall be liable to CCC for any difference.

(d) Warehouse receipts will not be released except as provided in this section.

[54 FR 11497, Mar. 21, 1989, and 54 FR 25445, June 15, 1989, as amended at 54 FR 41239, Oct. 6, 1989]

§ 1427.23 Settlement.

(a) The settlement of loans shall be made by CCC on the basis of the grade, quality, and quantity of the commodity delivered to CCC by the producer.

(b) Settlements made by CCC with respect to eligible commodities which are acquired by CCC which are stored in an approved warehouse shall be made on the basis on the entries set forth in the applicable warehouse receipt and other accompanying documents.

(c) If a producer does not pay to CCC the total amount due in accordance with a loan, CCC shall have the right to acquire title to the loan collateral and to sell or otherwise take possession of such collateral.

(d) On or after maturity and nonpayment of the note, title to the cotton shall, at CCC's election, without a sale thereof, vest in CCC, and CCC shall have no obligation to pay for any market value which such cotton may have in excess of the amount of the loan, plus interest and charges.

(e) In the event the producer has made a fraudulent representation in the loan documents or in obtaining the loan:

(1) The producer shall be personally liable for any amount by which the amount due on the loan exceeds the market value of the cotton pledged as collateral for the loan as of the date title vests in CCC, as determined by CCC; and

(2) The proceeds received from the sale of the cotton shall be credited by CCC against the amount due on the loan, and the producer shall be personally liable for any balance due on the loan.

(f) To avoid administrative costs of making small payments and handling small accounts, amounts of $9.99 or less will be paid to the producer only upon the producer's request. Deficiencies of $9.99 or less, including interest, may be disregarded unless demand for payment is made by CCC.

[54 FR 11498, Mar. 21, 1989, and 54 FR 25445, June 15, 1989]

§ 1427.24 Death, incompetency, or disappearance.

In the case of death, incompetency, or disapperance of any producer who is entitled to the payment of any proceeds in settlement of a loan, payment shall, upon proper application to the county office which disbursed the loan, be made to the person or persons who would be entitled to such producer's payment as provided in the regulations entitled Payment Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent, Part 707 of this title, and any amendment thereto.

§ 1427.25 [Reserved]

§ 1427.26 Recourse loan.

The Secretary may make recourse loans available to eligible producers. Repayment or settlement of such recourse loans shall be in accordance with the terms and conditions set forth by CCC when the availability of such recourse loans is announced.

[51 FR 8464, Mar. 11, 1986, and 51 FR 36905, Oct. 16, 1986]

Subpart—Payments to First Handlers of Upland Cotton

AUTHORITY: Sec. 103A of the Agricultural Act of 1949, as amended; 99 Stat. 1407, as amended (7 U.S.C. 1444-1).

SOURCE: 51 FR 32299, Sept. 11, 1986 (interim), and 51 FR 46997, Dec. 30, 1986 (final), unless otherwise noted.

§ 1427.50 General provisions.

(a) This subpart sets out the terms and conditions under which the Commodity Credit Corporation ("CCC") shall make payments, in the form of commodity certificates, to eligible first handlers of upland cotton who have entered into an Upland Cotton First Handler Agreement with CCC to participate in the first handler program, in accordance with section 103A(5) (D) of the Agricultural Act of 1949, as amended.

(b) If, beginning August 1, 1986, CCC determines that the adjusted world price for upland cotton (determined in accordance with 7 CFR Part 26) is less than the current load repayment rate for a crop of upland cotton, and that the cotton loan program implemented under Plan A or Plan B (in accordance with 7 CFR 1427.8) has failed to make domestically produced upland cotton competitive on the world market, then CCC shall make payments in accordance with the provisions of this subpart to eligible first handlers of upland cotton.

(c) Such payment shall be based upon the quantity of eligible upland cotton which is purchased by eligible first handlers for either domestic consumption or export during a period in which the adjusted world price is below the announced loan repayment rate for a crop of upland cotton, multiplied by the payment rate determined in accordance with § 1427.55.

§ 1427.51 Eligible upland cotton.

(a) For the purpose of this subpart, eligible upland cotton is domestically produced upland cotton which meets the requirements of paragraphs (b) and (c) of this section.

(b) Eligible upland cotton must be either—

(1) 1986-crop upland cotton baled lint which is not pledged as collateral for a price support loan,

(2) 1986-crop upland cotton baled lint which has been pledged as collateral for a price support loan but which has been redeemed with cash;

(3) Any prior crop upland cotton baled lint which was pledged as collateral for a price support loan and which was redeemed with cash (at the loan value plus accrued charges) on or after August 1, 1986;

(4) 1986-crop samples removed from bales of upland cotton for classification purposes which have been rebaled (hereinafter called "loose");

(5) 1986-crop upland cotton classified by USDA's Agricultural Marketing Service as Below Grade; or

(6) 1986-crop upland cotton reprocessed gin motes which have been cleaned with conventional seed cotton cleaning or saw lint cleaning devices that have removed a substantial volume of the non-lint content and which have been baled.

(c) Eligible upland cotton must not be:

(1) Upland cotton with respect to which an inventory protection payment has been or may be issued;

(2) Upland cotton with respect to which a payment in accordance with the provisions of this subpart has been made available;

(3) Upland cotton which was obtained with a commodity certificate in accordance with the provisions of Part 770 of this title; or

(4) Domestically produced upland cotton which has been exported.

§ 1427.52 Eligible first handlers.

(a) For the purposes of this subpart, the following persons shall be considered to be eligible first handlers:

(1) A person regularly engaged in buying or selling eligible upland cotton who is the first such person to apply for a payment in accordance with this subpart with respect to a bale of eligible upland cotton;

(2) A producer of upland cotton who sells upland cotton directly to domestic textile mills or for export or who tenders upland cotton on a New York Futures Exchange number 2 contract; and

(3) A cooperative marketing association that acquires the upland cotton production of its members and that has entered into a Cooperative Commodity Certificate Redemption Agreement with CCC.

(b) Applications for payment in accordance with this subpart must contain documentation required by the provisions of the Upland Cotton First Handler Agreement and instructions issued by CCC.

§ 1427.53 Upland cotton first handler agreements.

(a) Payments in accordance with this subpart shall be made available to eligible first handlers who have entered into an Upland Cotton First Handler Agreement with CCC and who have complied with the terms and conditions set forth in this subpart and the Upland Cotton First Handler Agreement.

(b) Upland Cotton First Handler Agreements may be obtained from Cotton Branch, BCD, Kansas City Commodity Office (KCCO), P.O. Box 205, Kansas City, Missouri 64141. In order to participate in the program authorized by this subpart, first handlers must execute the Upland Cotton First Handler Agreement and forward an original and two copies to KCCO.

§ 1427.54 Commodity certificates.

Payments in accordance with this subpart shall be made available in the form of commodity certificates in accordance with Part 770 of this title.

§ 1427.55 Payment rate.

The payment rate for the purposes of calculating payments made available in accordance with this subpart shall be based upon the difference between the adjusted world price for upland cotton and the loan repayment rate, as specified in the Upland Cotton First Handler Agreement. A coarse count adjustment shall be applied as provided in 7 CFR Part 26 and the Upland Cotton First Handler Agreement. Payment rates for eligible cotton other than baled upland lint cotton shall be based on a percentage of the basic rate, exclusive of coarse count adjustment, as specified in the Upland Cotton First Handler Agreement.

Subpart—Seed Cotton Loan Program Regulations

AUTHORITY: Secs. 4, 5, 62 Stat. 1070, as amended (15 U.S.C. 714 b and c).

SOURCE: 43 FR 19194, May 4, 1978, unless otherwise noted.

§ 1427.160 General statement.

(a) The regulations in this subpart are applicable to the 1989 and subsequent crops of upland and extra long staple cotton when the Commodity Credit Corporation ("CCC") announces that recourse loans are available with respect to such a crop. If such an announcement is made, such loans will be available through March 31 of the year following the calendar year in which such crop is planted. Additional terms and conditions are set forth in the note and security agreement which must be executed by a producer in order to receive such loans.

(b) Price support rates and the forms which are used in administering the program for a crop of upland and extra long staple cotton are available in State and county Agricultural Stabilization and Conservation Service ("ASCS") offices ("State and county offices", respectively). Price support rates shall be based upon the location at which the loan collateral is stored.

(c) A producer must, unless otherwise authorized by CCC, request price support at the county office which, in accordance with Part 719 of this title, is responsible for administering programs for the farm on which the cotton was produced. An approved cooperative marketing association must, unless otherwise authorized by CCC, request price support at a servicing agent bank approved by CCC. All note and security agreements and related documents necessary for the administration of the price support programs shall be determined by CCC and are available at State and county offices.

(d) Price support loans shall not be available with respect to any commodity produced on land owned or otherwise in the possession of the United States if such land is occupied without the consent of the United States.

[54 FR 11498, Mar. 21, 1989, and 54 FR 25445, June 15, 1989]

§ 1427.161 Administration.

Section 1427.2 of this part shall be applicable to this subpart.

[54 FR 11498, Mar. 21, 1989, and 54 FR 25445, June 15, 1989]

§ 1427.162 Definitions.

Section 1427.3 of this part shall be applicable to this subpart.

[54 FR 11498, Mar. 21, 1989, and 54 FR 25445, June 15, 1989]

§ 1427.163 Disbursement of loans.

(a) *Where to request loans.* A producer or the producer's agent shall request a loan at the local county office for the county where the cotton is stored, which will assist the producer in completing the loan documents, except that approved cooperatives and approved financially responsible commercial ginning companies designated by producers to obtain loans in their behalf may obtain loans through a central county office.

(b) Disbursement of each loan will be made by the county office of the county in which the cotton is stored, except that approved cooperatives designated by producers to obtain loans in their behalf may obtain disbusement of loans at a servicing agent bank. Service charges shall be deducted from the loan proceeds. The producer or the producer's agent shall not present the loan documents for disbursement unless the cotton is in existence and in good condition. If the cotton is not in existence and in good condition at the time of disbursement, the producer or the agent shall immediately return the check issued in payment of the loan or, if the check has been negotiated, shall promptly return the proceeds.

[43 FR 19194, May 4, 1978, as amended at 54 FR 11498, Mar. 21, 1989, and 54 FR 25445, June 15, 1989]

§ 1427.164 Eligible producer.

Section 1427.4 of this part shall be applicable to this subpart.

[54 FR 11499, Mar. 21, 1989, and 54 FR 25445, June 15, 1989]

§ 1427.165 Eligible seed cotton.

(a) Cotton pledged as collateral for a loan must be tendered to CCC by an eligible producer and must be:

(1) In existence and in good condition at the time of disbursement of loan proceeds;

(2) Stored in identity preserved lots in approved storage meeting requirements of § 1427.171; and

(3) Insured at the full loan value against loss or damage by fire.

(b) The quality of cotton which may be pledged as collateral for a loan shall be the estimated quality of lint cotton in each lot of seed cotton as determined by the county office, except that if a control sample of the lot of cotton is classed by a USDA Board of Cotton Examiners, the quality for the lot shall be the quality shown on the form 1 or form 3 classification card issued for the control sample.

(c) To be eligible for price support, the beneficial interest in the commodity must be in the producer who is pledging the commodity as collateral for a loan as provided in § 1427.5(c)(1).

[54 FR 11499, Mar. 21, 1989, and 54 FR 25445, June 15, 1989]

§ 1427.166 Insurance.

The cotton must be insured at the full loan value against loss or damage by fire.

§ 1427.167 Liens.

If there are any liens or encumbrances on the cotton, waivers that will fully protect the interest of CCC must be obtained even though the liens or encumbrances are to be satisfied from the loan proceeds, except in the case of approved cooperatives who agree to hold CCC harmless from liability to prior lienholders. In lieu of waiving his prior lien on the cotton tendered as security for a loan, a lienholder may execute a Lienholder's Subordination agreement (form CCC-864) with CCC in which the lienholder subordinates the security interest to the rights of CCC in the cotton. A fraudulent representation as to prior liens or otherwise will render the producer liable under the civil frauds statutes and subject the producer and any other person who causes the fraudulent representation to be made to criminal prosecution under the provisions of the Commodity Credit Corporation Charter Act.

§ 1427.168 Setoffs.

(a) *Facility and drying equipment loans.* If any installment or installments on any loan made by CCC on farm storage facilities or drying equipment are due and payable under the provisions of the note evidencing such loan out of any amount due the producer under the regulations in this subpart, the amount due the producer, after deduction of applicable fees and charges and amounts due prior lienholders, shall be applied to satisfy the amounts due and payable on such installment(s).

(b) *Producers listed on county claim control record.* If the producer is indebted to CCC or to any other agency of the United States and such indebtedness is listed on the county claim control record, amounts due and payable to the producer under the regulations in this subpart, after deduction of amounts due and payable on farm storage facilities or drying equipment and other amounts provided in paragraph (a) of this section, shall be applied as provided in the Secretary's "Setoff Regulations", Part 13 of this title, to such indebtedness.

(c) *Producer's right.* Compliance with the provisions of this section shall not deprive the producer of any right that would otherwise have to contest the justness of the indebtedness involved in the setoff action, either by administrative appeal or by legal action.

[43 FR 19194, May 4, 1978. Redesignated at 54 FR 11499, Mar. 21, 1989, and 54 FR 25445, June 15, 1989]

§ 1427.169 Fees, charges and interest.

(a) A producer shall pay a nonrefundable loan service fee to CCC at a rate determined by CCC.

(b) Interest which accrues with respect to a loan shall be determined in accordance with Part 1405 of this Chapter. Except with respect to called loans, loans which have been repaid by the maturity date shall accrue interest in accordance with 1403 of this chapter beginning the day after the maturity date of the loan. With respect to called loans, interest shall accrue in accordance with Part 1403 of this chapter beginning on the required settlement date.

[54 FR 11499, Mar. 21, 1989, and 54 FR 25445, June 15, 1989]

§ 1427.170 Quantity for loan.

(a) *Quantity.* The quantity of lint cotton in each lot of seed cotton tendered for loan shall be determined by the county office by multiplying the weight or estimated weight of seed cotton by the lint turnout factor determined in accordance with paragraph (b) of this section.

(b) *Lint turnout factor.* The lint turnout factor for any lot of seed cotton shall be the percentage determined by the county committee representative during the initial inspection of the lot. If a control portion of the lot is weighed and ginned, the turnout factor determined for the portion of cotton ginned will be used for the lot. If a control portion is not weighed and ginned, the lint turnout factor shall not exceed 32 percent for machine picked cotton and 22 percent for machine stripped cotton unless acceptable proof is furnished showing that the lint turnout factor is greater.

(c) *Maximum quantity for loan.* Loans shall not be made on more than a percentage established by the county committee of the quantity of lint cotton determined as provided in this section. If the seed cotton is weighed, the percentage to be used shall not be more than 95 percent. If the quantity is determined by measurement, the percentage to be used shall not be more than 90 percent. The percentage to be used in determining the maximum quantity for any loan may be reduced below such percentages by the county committee when determined necessary to protect the interests of CCC on the basis of one or more of the following risk factors:

(1) Condition or suitability of the storage site or structure,

(2) Condition of the cotton,

(3) Location of the storage site or structure, and

(4) Other factors peculiar to individual farms or producers which relate to the preservation or safety of the loan collateral. Loans may be made on a lower percentage basis at the producer's request.

§ 1427.171 Approved storage.

Approved storage shall consist of storage located on or off the producer's farm (excluding public warehouses) which is determined by a county committee representative to afford adequate protection against loss or damage and which is located within a reasonable distance, as determined by CCC, of an approved gin. If the cotton is stored off the producer's farm, the producer must furnish satisfactory evidence that the producer has the authority to store the cotton on such property and that the owner of such property has no lien for such storage against the cotton.

§ 1427.172 Settlement.

(a) A producer may, at any time prior to maturity of the loan, obtain release of all or any part of the loan cotton by paying to CCC the amount of the loan, plus interest and charges.

(b)(1) A producer or the producer's agent shall not remove from storage any cotton which is pledged as collateral for a loan until prior written approval has been received from the county committee for removal of such cotton. If a producer or the producer's agent obtains such approval, they may remove such cotton from storage, sell the seed cotton, have it ginned, and sell the lint cotton and cotton seed obtained therefrom. The ginner shall inform the county office in writing immediately after the cotton removed from storage has been ginned and furnish the county office the loan number, producer's name, and applicable gin bale numbers. If the seed cotton is removed from storage, the loan interest and charges thereon must be satisfied not later than the earlier of:

(i) The date established by the county committee;

(ii) 5 days of the date of the producer received the class cards (and the warehouse receipt, if the cotton is delivered to a warehouse), representing such cotton; or

(iii) The loan maturity date.

(2) If the seed cotton or lint cotton is sold, the loan, interest, and charges must be satisfied immediately.

(3) A producer (except a cooperative) may obtain a warehouse stored loan on the lint cotton, but the loan, interest, and charges on the seed cotton must be satisfied out of the proceeds of the warehouse stored loan.

(4) An approved cooperative must repay the seed cotton loan, interest, and charges before pledging the cotton for a warehouse stored loan. If approved cooperatives and commercial ginning companies authorized by producers to obtain loans in their behalf remove seed cotton from storage prior to obtaining approval to move such cotton, such removal shall constitute conversion of such cotton unless:

(i) The cooperative or commercial ginning company notifies the county office in writing the following morning by mail or otherwise that such cotton has been moved and is on the gin yard;

(ii) Furnished CCC an irrevocable letter of credit if requested; and

(iii) Repays the loan within the time specified by the county committee.

(5) Any removal from storage shall not be deemed to constitute a release of CCC's security interest in the cotton or to release the producer or approved cooperative from liability for the loan, interest, and charges if full payment of such amount is not received by the county office.

(c) If, either before or after maturity, the producer discovers that the cotton is going out of condition or is in danger of going out of condition, the producer shall immediately so notify the county office and confirm such notice in writing. If the county committee determines that the cotton is going out of condition or is in danger of going out of condition, the county committee will call for repayment of the loan on or before a specified date. If the producer does not repay the loan or have the cotton ginned and obtain a warehouse-stored loan on the lint cotton produced therefrom within the period as specified by the county committee, the cotton shall be considered abandoned.

(d) If the producer has control of the storage site and if the producer subsequently loses control of the storage site or there is danger of flood or damage to the cotton or storage structure making continued storage of the cotton unsafe, the producer shall immediately either repay the loan or move the cotton to the nearest approved gin for ginning and shall, at the same time, inform the county office. If the producer does not do so, the cotton shall be considered abandoned.

[54 FR 11499, Mar. 21, 1989, and 54 FR 25445, June 15, 1989]

§ 1427.173 Foreclosure.

Any seed cotton pledged as collateral for a loan which is abandoned or which has not been removed from storage by loan maturity may be removed from storage by CCC and ginned and the resulting lint cotton warehoused for the account of CCC. The lint cotton and cottonseed may be sold, at such time, in such manner, and upon terms as CCC may determine at public or private sale. CCC may become the purchaser of the whole or any part of such cotton and cottonseed. If the proceeds are less than the amount due on the loan (including interest, ginning charges, and any other charges incurred by CCC), the producer shall be liable for such difference.

[54 FR 11499, Mar. 21, 1989, and 54 FR 25445, June 15, 1989]

§ 1427.174 Restrictions in use of agents.

A producer who desires to appoint an attorney-in-fact to act in the producer's place and stead in obtaining and repaying loans may use Power of Attorney, Form ASCS 211 (referred to in this subpart as "Form 211"), except that a power of attorney on another form will be accepted if it is determined by CCC to be legally sufficient. The original or facsimile of the power of attorney or a copy certified by a notary public as a true and correct copy must be filed with the county office. An attorney-in-fact shall not make any purchase of the seed cotton redeemed from a loan or the producers' equity in such cotton for the attorney-in-fact's account or as agent for others, or sell any such cotton or equities therein to any person by whom the attorney-in-fact is employed or who has the right to control or direct the attorney-in-fact's sales of the seed cotton, the equity therein, or the lint cotton produced therefrom. Any delegation of authority given in violation of this paragraph shall be without force and effect and shall not be recognized by CCC.

§§ 1427.175–1427.178 [Reserved]

§ 1427.179 Fraud and unlawful disposition.

The making of any fraudulent representation by a producer in the loan documents, in obtaining a loan, or in connection with settlement, or the unlawful disposition of any portion of the cotton by the producer, shall render the producer and any other person who causes such fraudulent representation to be made subject to criminal prosecution or action under civil frauds statutes under Federal law.

Subpart—Standards for Approval of Warehouses for Cotton or Cotton Linters

AUTHORITY: Secs. 4 and 5, 62 Stat. 1070, as amended, 1072, as amended (15 U.S.C. 714 b and c).

SOURCE: 44 FR 67085, Nov. 23, 1979, unless otherwise noted.

§ 1427.1081 General statement and administration.

(a) This subpart prescribes the requirements which must be met and the procedures which must be followed by a warehouseman in the United States or Puerto Rico who desires the approval by the Commodity Credit Corporation (hereinafter referred to as "CCC") of warehouse(s) for the storage and handling of cotton and cotton linters, under a Cotton Storage Agreement, which are owned by CCC or held by CCC as security for price support loans. This subpart is not applicable to cotton or cotton linters purchased in storage for prompt shipment or to handling operations of a temporary nature.

(b) Copies of the CCC storage agreement and forms required for obtaining approval under this subpart may be obtained from the Kansas City Commodity Office, U.S. Department of Agriculture, P.O. Box 205, Kansas City, Missouri 64141 (hereinafter referred to as the "KCCO").

(c) A warehouse must be approved by the KCCO and a storage agreement must be in effect between CCC and the warehouseman before CCC will use such warehouse. The approval of a warehouse or the entering into of a storage agreement does not constitute a commitment that CCC will use the warehouse, and no official or employee of the U.S. Department of Agriculture is authorized to make any such commitment.

(d) A warehouseman, when applying for approval under this subpart shall submit to CCC at KCCO:

(1) A completed Form CCC-49, "Application for Approval of Warehouse for Storage of Cotton and/or Cotton Linters,"

(2) A current financial statement on Form WA-51, "Financial Statement", supported by such supplemental schedules as CCC may request. Financial statements may be submitted on forms other than Form WA-51 with approval of the Director, KCCO, or the Director's designee. Financial statements shall show the financial condition of the warehouseman as of a date no earlier than ninety (90) days prior to the date of the warehouseman's application, or such other date as CCC may prescribe. Additional financial statements shall be furnished annually and at such other times as CCC may require. CCC also may require that financial statements prepared by the warehouseman or by a public accountant be examined by an independent certified public accountant in accordance with generally accepted auditing standards. Only one financial statement is required for a chain of warehouses owned or operated by a single business entity. If approved by the Director, KCCO, or the Director's designee, the financial statement of a parent company, which includes the financial position of a wholly-owned subsidiary, may be used to meet the CCC standards for approval for the wholly-owned subsidiary.

(3) Evidence that the warehouseman is licensed by the appropriate licensing authority as required under § 1427.1082(a)(2) and such other documents or information as CCC may require,

(4) For warehouseman not operating under the U.S. Warehouse Act, a sample copy of the warehouseman's receipts and bale tags, and

(5) Evidence of applicable fire insurance rates.

[44 FR 67085, Nov. 23, 1979, as amended by Amdt. 3, 50 FR 16454, Apr. 26, 1985]

§ 1427.1082 Basic standards.

Unless otherwise provided in this subpart, each warehouseman and each of the warehouses owned or operated by such warehouseman for which CCC approval is sought for the storage or handling of CCC-owned or -loan commodities shall meet the following standards:

(a) The warehouseman shall:

(1) Be an individual, partnership, corporation, association, or other legal entity engaged in the business of storing or handling for hire, or both, the applicable commodity. The warehouseman, if a corporation, shall be authorized by its charter to engage in such business,

(2) Have a current and valid license for the kind of storage operation for which the warehouseman seeks approval if such a license is required by State or local laws or regulations,

(3) Have a net worth which is the greater of $25,000 or the amount which results from multiplying the maximum storage capacity of the warehouse (the total number of bales of cotton or cotton linters which the warehouse can accommodate when stored in the customary manner) times ten (10) dollars per bale. The net worth need not exceed $250,000. If the calculated net worth exceeds $25,000, the warehouseman may satisfy any deficiency in net worth between the $25,000 minimum requirement and such calculated net worth by furnishing bond (or acceptable substitute security) meeting the requirements of § 1427.1083,

(4) Have available sufficient funds to meet ordinary operating expenses,

(5) Have satisfactorily corrected, upon request by CCC, any deficiencies in the performance of any storage agreement with CCC,

(6) Maintain accurate and complete inventory and operating records,

(7) Use only card type warehouse receipts which are pre-numbered and pre-punched or such other document as CCC may prescribe,

(8) Have available at the warehouse adequate and operable firefighting equipment for the type of warehouse and applicable stored commodity, and

(9) Have a work force and equipment available to provide adequate storage and handling service.

(b) The warehouseman, officials, or supervisory employees of the warehouseman in charge of the warehouse operation shall have the necessary experience, organization, technical qualifications, and skills in the warehousing business regarding the applicable commodities to enable them to provide proper storage and handling services.

(c) Warehouseman, officials and each of the supervisory employees of the warehouseman in charge of the warehouse operation shall:

(1) Have a satisfactory record of integrity, judgment, and performance, and

(2) Be neither suspended nor debarred under applicable CCC suspension and debarment regulations.

(d) The warehouse shall:

(1) Be of sound construction, in good state of repair, and adequately equipped to receive, handle, store, preserve, and deliver the applicable commodity,

(2) Be under the control of the contracting warehouseman at all times, and

(3) Not be subject to greater than normal risk of fire, flood, or other hazards.

[44 FR 67085, Nov. 23, 1979, as amended by Amdt. 3, 50 FR 16455, Apr. 26, 1985]

§ 1427.1083 Bonding requirements for net worth.

A bond furnished by a warehouseman under this subpart must meet the following requirements:

(a) Such bond shall be executed by a surety which:

(1) Has been approved by the U.S. Treasury Department, and

(2) Maintains an officer or representative authorized to accept service of legal process and in the State where the warehouse is located.

(b) Such bond shall be on Form CCC-33, "Warehouseman's Bond", except that a bond furnished under State law (statutory bond) or under operational rules of nongovernmental supervisory agencies may be accepted in an equivalent amount as a substitute for a bond running directly to CCC if:

(1) CCC determines that such bond provides adequate protection to CCC.

(2) It has been executed by a surety specified in paragraph (a) of this section or has a blanket rider and endorsement executed by such a surety with the liability of the surety unde
such rider or endorsement being th
same as that of the surety under th
original bond, and

(3) It is noncancellable for not les
than ninety (90) days or includes
rider providing for not less tha
ninety (90) days' notice to CCC befor
cancellation. Excess coverage on a sub
stitute bond for one warehouse wi
not be accepted or applied by CC
against insufficient bond coverage o
other warehouses.

(c) Cash and negotiable securities o
fered by a warehouseman may be a
cepted by CCC in lieu of the equiv
lent amount of required bond cove
age. Any such cash or negotiable sec
rities accepted by CCC will be r
turned to the warehouseman when th
period for which coverage was r
quired has ended and there appears
CCC to be no liability under the sto
age agreement.

(d) A legal liability insurance poli
may be accepted by CCC in lieu of th
required amount of bond coverage pr
vided such policy contains a clause
rider making the policy payable
CCC, CCC determines that it affor
protection equivalent to a bond, a
the Office of the General Couns
U.S. Department of Agriculture, a
proves it for legal sufficiency.

(e) An irrevocable letter of cred
may be accepted by CCC in lieu of th
required amount of bond coverage pr
vided that the issuing bank is a co
mercial bank insured by the Feder
Deposit Insurance Corporation. Su
standby letter of credit shall be
Form CCC-33A, "Irrevocable Letter
Credit", or on such other form as m
be specifically approved by the Dir
tor, KCCO, or the Director's design

[44 FR 67085, Nov. 23, 1979, as amended
Amdt. 3, 50 FR 16455, Apr. 26, 1985]

§ 1427.1084 Examination of warehouses.

Except as otherwise provided in th
subpart, a warehouse must be exa
ined by a person designated by C
before it may be approved by CCC
the storage and handling of the co
modity and periodically thereafter
determine its compliance with CC
standards and requirements.

§ 1427.1085 Exceptions.

Notwithstanding any other provisions of this report:

(a) The financial bond and original and periodic warehouse examination provisions of this subpart do not apply to any warehouseman approved or applying for approval for the storage and handling of cotton or cotton linters under CCC programs if the warehouse is licensed under the U.S. Warehouse Act for such commodity but a special examination shall be made of such warehouse whenever CCC determines such action is necessary.

(b) A warehouseman who has a net worth of at least $25,000 but who fails, or whose warehouse fails, to meet one or more of the other standards of this subpart may be approved if:

(1) CCC determines that the warehouse services are needed and the warehouse storage and handling conditions provide satisfactory protection for the commodity,

(2) The warehouseman furnishes such additional bond coverage (or cash or acceptable negotiable securities or legal liability insurance policy) as may be prescribed by CCC.

(c) The bond requirements, and, at the discretion of the KCCO, the financial, warehouse receipt, and bale tag requirements, of this subpart are not applicable to any warehouseman approved or applying for approval for the storage and handling of cotton or cotton linters under CCC programs if the warehouse is operated by the State of South Carolina Department of Agriculture.

[44 FR 67085, Nov. 23, 1979, as amended by Amdt. 3, 50 FR 16455, Apr. 26, 1985]

§ 1427.1086 Approval of warehouse, requests for reconsideration.

(a) CCC will approve a warehouse if it determines that the warehouse meets the standards set forth in this subpart. CCC will send a notice of approval to the warehouseman. Approval under this subpart, however, does not relieve the warehouseman of the responsibility for performing the warehouseman's obligations under any agreement with CCC or any other agency of the United States.

(b) Except as otherwise provided in this subpart:

(1) CCC will not approve the warehouse if CCC determines that the warehouse does not meet the standards set forth in this subpart, and

(2) CCC will send any notice of rejection of approval to the warehouseman. This notice will state the cause(s) for such action. Unless the warehouseman or any officials or supervisory employees of the warehouseman are suspended or debarred, CCC will approve the warehouse if the warehouseman establishes that the causes for CCC's rejection of approval have been remedied.

(c) If rejection of approval by CCC is due to the warehouseman's failure to meet the standards set forth:

(1) In § 1427.1082, other than the standard set forth in paragraph (c)(2) thereof, the warehouseman may, at any time after receiving notice of such action, request reconsideration of the action and present to the Director, KCCO, in writing, information in support of such request. The Director shall consider such information in making a determination of notify the warehouseman in writing of such determination. The warehouseman may, if dissatisfied with the Director's determination, obtain a review of the determination and an informal hearing thereon by filing an appeal with the Deputy Administrator, Commodity Operations, Agricultural Stabilization and Conservation Service (hereinafter referred to as "ASCS"). The time of filing appeals, forms for requesting an appeal, nature of the informal hearing, determination and reopening of the hearing shall be as prescribed in the ASCS regulations governing appeals, 7 CFR Part 780. When appealing under such regulations, the warehouseman shall be considered as a "participant"; and

(2) In § 1427.1082(c)(2), the warehouseman's administrative appeal rights with respect to suspension and debarment shall be in accordance with applicable CCC regulations. After expiration of a period of suspension or debarment, a warehouseman may, at any time, apply for approval under this subpart.

[Amdt. 3, 50 FR 16455, Apr. 26, 1985]

§ 1427.1087 Exemption from requirements.

(a) If warehousing services in any area cannot be secured under the provisions of this subpart and no reasonable and economical alternative is available for securing such services for commodities under CCC programs, the President or Executive Vice President, CCC may exempt, in writing, applicants in such area from one or more of the standards of this subpart and may establish such other standards as are considered necessary to safeguard satisfactorily the interests of CCC.

(b) Warehousemen who are currently under contract with CCC will be required to meet the terms and conditions of these regulations at the time of renewal of their contract.

[44 FR 67085, Nov. 23, 1979, as amended at 44 FR 74797, Dec. 18, 1979]

§ 1427.1088 Contract fees.

(a) Each warehouseman who has a non-federally licensed cotton warehouse must pay an annual contract fee for each such warehouse for which the warehouseman requests renewal of an existing Cotton Storage Agreement or approval of a new Cotton Storage Agreement as follows:

(1) A warehouseman who has an existing Cotton Storage Agreement with CCC for the storage and handling of CCC-owned cotton or cotton pledged to CCC as loan collateral must pay an annual contract fee for each warehouse approved under such agreement in advance of the renewal date of such agreement.

(2) A warehouseman who does not have an existing Cotton Storage Agreement with CCC for the storage and handling of CCC-owned cotton or cotton pledged to CCC as loan collateral but who desires such an agreement must pay a contract fee for each warehouse for which CCC approval is sought prior to the time that the agreement is approved by CCC.

(b) The amount of the contract fee shall be determined and announced annually in the FEDERAL REGISTER.

[Amdt. 4, 50 FR 36569, Sept. 9, 1985]

§ 1427.1089 OMB Control Numbers assigned pursuant to Paperwork Reduction Act.

The information collection requirements contained in this regulation (7 CFR Part 1427) have been approved by the Office of Management and Budget under provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Numbers 0560-0040, 0560-0074, 0560-0027, and 0560-0059.

[Amdt. 3, 50 FR 16455, Apr. 26, 1985. Redesignated by Amdt. 4, 50 FR 36569, Sept. 9

1985]

PART 1430—DAIRY PRODUCTS

Subpart—Price Support Program

Sec.

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AUTHORITY: 7 U.S.C. 1446; 15 U.S.C. 714b and 714c.

Subpart—Price Support Program

§ 1430.282 Price support program for milk.

(a)(1) The level of price support for milk and the prices Commodity Credit Corporation will pay for dairy products purchased under the Milk Price Support Program are revised at least once a year. Such revisions will appear as notices in the FEDERAL REGISTER.

(2) Price support for milk will be made available through purchases by Commodity Credit Corporation of butter, nonfat dry milk, and Cheddar cheese, offered subject to the terms and conditions of purchase announcements issued by the Agricultural Stabilization and Conservation Service, United States Department of Agriculture.

(3) Commodity Credit Corporation may, by special announcement, offer to purchase other dairy products to support the price of milk.

(4) Purchase announcements setting forth terms and conditions of purchase may be obtained upon request from the United States Department of Agriculture, Agricultural Stabilization and Conservation Service, Procurement and Sales Division, P.O. Box 2415, Washington, DC 20013, or the United States Department of Agriculture, Agricultural Stabilization and Conservation Service, Kansas City ASCS Commodity Office, P.O. Box 8377, Shawnee Mission, Kansas 66208.

(b) (1) The block cheese shall be U.S. Grade A or higher, except that the moisture content shall not exceed 38.5 percent; the barrel cheese shall be U.S. Extra Grade, except that the moisture content shall not exceed 36.5 percent.

(2) The nonfat dry milk shall be U.S. Extra Grade, except that the moisture content shall not exceed 3.5 percent.

(3) The butter shall be U.S. Grade A or higher.

(c) The products shall be manufactured in the United States from milk produced in the United States and shall not have been previously owned by CCC.

(d) Purchases will be made in carlot weights specified in the announcements. Grade and weights shall be evidenced by inspection certificates issued by the U.S. Department of Agriculture.

(Secs. 301, 401, Pub. L. 439, 81st Cong., 63 Stat. 1052, 1054, as amended (7 U.S.C. 1446, 1421); Secs. 4 and 5, Pub. L. 806, 80th Cong., 62 Stat. 1070, 1072, as amended (15 U.S.C. 714 b and c))

[45 FR 73011, Nov. 4, 1980, as amended at 46 FR 50363, Oct. 13, 1981]

Subpart—Regulations Governing Reductions in the Price of Milk Marketed by Producers, January 1, 1990, to January 31, 1990

AUTHORITY: 7 U.S.C. 1446; 15 U.S.C. 714b and 714c unless otherwise noted.

SOURCE: 55 FR 2363, Jan. 24, 1990, unless otherwise noted.

§ 1430.340 General statement.

(a) *Purpose*—This subpart implements the provisions of section 201(d)(2)(F) of the Agricultural Act of 1949, as amended, under which the Secretary of Agriculture is required to provide, in lieu of reductions in dairy program outlays that otherwise would be required under an order issued under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985, for reductions in the price received by producers for all milk produced in the United States and marketed by producers for commercial use. The reduction shall be made and remitted to the Commodity Credit Corporation in the manner prescribed in these regulations.

(b) *Applicability*—The provisions of this subpart shall apply to all milk produced in the United States that is marketed for commercial use by producers during the period beginning on

January 1, 1990, and ending January 31, 1990. The term "United States" shall have the meaning assigned in 7 CFR 1430.341.

§ 1430.341 Definitions.

For purpose of this subpart:

(a) "AMS" means the Department's Agricultural Marketing Service.

(b) "ASCS" means the Department's Agricultural Stabilization and Conservation Service.

(c) "CCC" means the Commodity Credit Corporation.

(d) "Dairy Division" means the Dairy Division of the AMS.

(e) "Department" means the United States Department of Agriculture.

(f) "Person" means any individual, partnership, corporation, association, or other business or governmental unit.

(g) "Producer" means any person who produced milk through the milking of cows.

(h) "Producer's Successor" means any person who receives or is entitled to receive payment for milk in lieu of payment to a producer.

(i) "Reduction" means that amount by which the price received for milk marketed for commercial use by producers is reduced in accordance with the provisions of this subpart.

(j) "Responsible Person" means:

(1) Any person who pays, or who is contractually or otherwise required to pay, a producer or producer's successor for milk marketed by a producer for commercial use, except as otherwise prescribed in paragraph (j)(2) of this section. This includes a handler regulated under a Federal milk order to the extent of, but not limited to, payments for milk that are transmitted by the handler to a Market Administrator under such an order for transmittal by the Market Administrator to individual producers; and

(2) Any producer with respect to milk of the producer's own production who markets such milk for commercial use in the form of milk or milk products: (i) To consumers either directly or through retail or wholesale outlets, or (ii) to persons located outside of the United States.

(k) "United States" means the forty-eight contiguous States of the continental United States (i.e., all fifty states of the United States, excluding Hawaii and Alaska) and the District of Columbia.

(l) "United States Bank" means a bank organized under the laws of the United States, a state of the United States or the District of Columbia.

(m) "Vice President, CCC" means the Vice President of CCC, who is also the Administrator of AMS.

[55 FR 2363, Jan. 24, 1990; 55 FR 4306, Feb. 5, 1990]

§ 1430.342 Responsibility for administration of regulations.

The AMS and its Dairy Division shall have the responsibility for administering the provisions of this subpart. Administative subpoenas as may be determined to be necessary for the administration of this subpart may be issued by the Vice President, CCC.

§ 1430.343 Required reductions and remittances.

(a) Required reductions—A reduction of six and three-tenths (6.3) cents per hundredweight shall be made in the price received by producers for all milk produced in the United States and marketed by producers for commercial use during the period beginning on January 1, 1990, and ending January 31, 1990.

(b) Remittances—Each responsible person shall remit to CCC the funds represented by the reductions required by 1430.343(a) by February 28, 1990. For all milk marketed by producers outside the United States, the producer shall remit the funds represented by the reductions unless the person paying the producer for the milk has remitted the funds represented by the reductions to CCC by the due date for remittances specified in this paragraph. Remittances to CCC shall be made using negotiable instruments payable in United States currency, drawn on a United States bank and made payable to the "Commodity Credit Corporation" or to "CCC". Remittances and reports required under this subpart shall be mailed to the location designated by the Dairy Division.

(c) Remittance Report—When remitting funds to CCC each responsible person shall file a report as prescribed by the Dairy Division which shall include:

(1) The identity of the responsible person, including such person's business address;

(2) The total pounds of milk to which the remittance applies; and

(3) Any additional information required by the Dairy Division.

(d) Application of Remittances—Funds received by CCC pursuant to this subpart shall be applied first to any outstanding penalty, then to late-payment and other charges, and then to the principal amount due.

(e) The funds remitted to CCC under this paragraph shall be considered to be included in the payments made to a producer of milk for purposes of the minimum price provisions of the Agricultural Adjustment Act (7 U.S.C. 601 *et seq.*), as reenacted and amended by the Agricultural Marketing Agreement Act of 1937.

[55 FR 2363, Jan. 24, 1990; 55 FR 4306, Feb. 5, 1990]

§ 1430.344 Availability of records and facilities.

(a) Records to be maintained—Each responsible person shall maintain records in a manner that will demonstrate compliance with the provisions of this subpart.

(b) Availability of records and facilities—Each responsible person and producer shall make available to authorized representatives of CCC or the Department all records and facilities pertaining to such person's operations that are necessary to determine compliance with the provisions of this subpart.

(c) Retention of records—All records required under this subpart shall be retained by each responsible person and producer through January 31, 1993, or for such longer periods as the Dairy Division or CCC may require by notice to the responsible person or producer.

§ 1430.345 Adjustment of accounts of responsible persons.

Except as otherwise provided in this section, whenever the responsible person becomes aware through an audit or other means that an error in payment has been made, such responsible person must immediately notify CCC of the error and make any payment to the CCC that is due the CCC, including any late payment charges and other charges as are provided for in this subpart. If the error is otherwise unknown to the responsible person until notice is given by the CCC, the underpayment plus late payment charges and other charges provided for in this subpart shall be made within 30 days after the notice is issued by the CCC unless the CCC specifies, in writing, a later date for payment. Overpayments to the CCC shall be refunded by the CCC. Nothing in this section shall reduce the liability to the CCC for late-payment and other charges for underpayment or nonpayment to the CCC.

§ 1430.346 Charges and penalties.

(a) ***Charge for dishonored negotiable instruments*—Each person who issues** a negotiable instrument to CCC which is not honored because of insufficient funds or any other reason will be charged $25. The amount of this charge shall be in addition to any and all other authorized charges and penalties.

(b) *Late-Payment Charges*—Any unpaid obligation due CCC under this subpart shall be increased by a late-payment charge. Such charge shall be assessed in accordance with the provisions of 7 CFR Part 1403 or successor regulations. The timeliness of payment to CCC shall be determined upon the applicable postmark date or the date of receipt by CCC if no postmark date is available or legible.

(c) *Penalties*—(1) Any responsible person who fails to make a reduction in the price of milk as required in this subpart or any person who fails to remit to CCC the funds required to be collected and remitted by this subpart shall be liable, in addition to any other amount due, for a marketing penalty computed at a rate equal to the support price for milk in effect at the time the failure occurs on the quantity of milk involved. The Vice President, CCC, or a designee, may reduce any such penalty in such amount as is determined equitable in any case in which it is determined that the failure was unintentional on the part of the person involved.

(2) In addition to the marketing penalty prescribed in paragraph (c)(1) of this section, any person who knowingly violates any of the provisions of this subpart shall be liable for a civil penalty in an amount which does not exceed $1,000 for each violation.

(3) The Vice President, CCC or a designee, shall notify any person against whom a penalty is to be assessed of the intention to assess such penalty and provide such person with an opportunity for an administrative hearing.

§ 1430.347 Scheme or device.

Any person who is determined by CCC to have knowingly adopted or participated in any scheme or device which tends to defeat, or has the effect of defeating, the implementation of, or purposes of, the provisions of this subpart, or the program provided for in this subpart, or who makes any fraudulent representation or misrepresents any fact affecting a determination under this subpart, shall be considered to have knowingly violated the provisions of this subpart. In such event, in addition to any penalties which are due, all amounts which would have been due to CCC for the reductions required by this subpart but which were not paid because of the prohibited activity shall be immediately payable by such person to CCC.

[55 FR 2363, Jan. 24, 1990; 55 FR 4306, Feb. 5, 1990]

§ 1430.348 Continuing obligations.

The obligations of any person that arise under this subpart shall continue in effect until final payment or other disposition agreed to by CCC even though the reductions provided for in this part may no longer be required.

§ 1430.349 Administrative review.

Except with respect to the assessment of penalties under § 1430.346(c), any responsible person who is adversely affected by any determination of liability under the terms and conditions of this subpart may obtain a reconsideration of such determination by filing a request for reconsideration with the Director of the Dairy Division within 30 days of the date of notice of the determination. If, upon reconsideration by the Director, the responsible person is dissatisfied with the determination, such person may obtain a review of such determination and an informal hearing by filing an appeal with the Vice President, CCC. Such appeal must be filed within 15 days of the date of the redetermination by the Director. Such appeals to the Vice President, CCC, will be conducted in the same manner as administrative appeals which are conducted under 7 CFR part 780. The decision on such appeal constitute the final agency action in the matter.

§ 1430.350 Setoffs and withholdings.

CCC may set off or withhold any amounts due CCC under this subpart in accordance with the provisions of 7 CFR Part 1408 or successor regulations.

§ 1430.351 Paperwork Reduction Act assigned number.

The Office of Management and Budget has approved the information collection requirements contained in these regulations under the provisions of 44 U.S.C. chapter 35 and OMB number 0560-0126 has been assigned.

Subpart—Dairy Termination Program

AUTHORITY: Sec. 201 of the Agricultural Act of 1949, as amended, 63 Stat 1052, as amended (7 U.S.C. 1446(d)); secs. 4 and 5 of the Commodity Credit Corporation Charter Act, 62 Stat. 1070, as amended, 1072, as amended (15 U.S.C. 714 b and c).

SOURCE: 51 FR 7915, Mar. 7, 1986, unless otherwise noted.

§ 1430.450 General statement.

This subpart implements the Dairy Termination Program which is authorized by section 201(d)(3) of the Agricultural Act of 1949, as amended by the Food Security Act of 1985 (Pub. L. 99-198) for the eighteen-month period beginning April 1, 1986. The purpose of the program is to achieve reductions in the quantity of milk marketed for commercial use. Under the program, the Commodity Credit Corporation will enter into contracts with producers under which producers will agree to sell their dairy cattle for slaughter or export and terminate milk production for a five-year period.

§ 1430.451 Administration.

(a) The program will be administered under the general supervision of the Administrator, Agricultural Stabilization and Conservation Service (ASCS), and shall be carried out in the field by Agricultural Stabilization and Conservation State and county committees (herein called "State and county committees") and the ASCS Kansas City Management Field Office (KCMO).

(b) State and county committees, the KCMO, and representatives and employees thereof do not have authority to modify or waive any of the provisions of the regulations in this subpart, as amended or supplemented.

(c) The State committee shall take any action required by these regulations which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, any action taken by such county committee which is not in accordance with this subpart, or

(2) Require a county committee to withhold taking any action which is not in accordance with this subpart.

(d) No delegation herein to a State or county committee shall preclude the Administrator, ASCS, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

§ 1430.452 Definitions.

In determining the meanings of the provisions of this subpart, unless the context indicates otherwise, words imparting the singular include and apply to several persons or things, words imparting the plural include the singular, words imparting the masculine gender include the feminine as well, and words used in the present tense include the past and future as well as the present. The following terms shall have the following meanings and all other words and phrases shall have the meanings assigned to them in the regulations governing reconstitution of farms in Part 719 of this chapter.

(a) *Acceptable evidence of milk marketed for commercial use* means documentation of the quantity of milk marketed for commercial use which is considered to be sufficient by CCC and verified through compliance checks and includes such items as:

(1) Monthly sales receipts or check stubs; or

(2) Computer printouts or handwritten reports prepared by a third party showing milk marketings certified to be complete and accurate by the preparer, and verified by actual marketing evidence.

(b) *Actively engaged in the production of milk* means engaged in the production and marketing of milk for commercial use in the United States.

(c) *ASCS* means the Agricultural Stabilization and Conservation Service, United States Department of Agriculture.

(d) *Bid* means a bid(s) submitted to obtain a contract, such bids being the amount of the nearest penny per hundredweight which when multiplied by the contract base shall constitute the maximum payment allowable under the contract.

(e) *Bid date* means the date on which the participating producers in the contracting entity submit a signed bid.

(f) *Brand or Branded* means the marking of dairy cattle in accordance with instructions from the county ASCS office.

(g) *Calf* means any female dairy bovine which weighs less than 500 pounds and is not pregnant.

(h) *CCC* means the Commodity Credit Corporation.

(i) *Contract* means the DTP Contract when executed by CCC after acceptance of a bid by CCC.

(j) *Contract base* means the milk base for the contracting entity as determined in accordance with § 1430.455 of this subpart.

(k) *Contract disposal period* means the dairy herd disposal period applicable to the contract.

(l) *Contract units* means units which are either (1) used to establish a contract base or (2) units to which the exemption in § 1430.453(c) of this subpart is applicable.

(m) *Contracting entity* means the producer or producers who submit a bid and are party to the same contract.

(n) *County ASCS office* means the office of the county committee in the county in which all or a portion of one or more of the units from which marketings used to establish the contract base are located and which the contracting entity elects to be the location through which all business related to the bid and contract shall be conducted.

(o) *County committee* means an ASCS county committee as established in accordance with section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)).

(p) *Cow* means any female dairy bovine that has had one or more calves.

(q) *Dairy cattle* means cows, heifers, and calves.

(r) *Dairy Termination Program (DTP)* means the program for purchasing by contract the termination of milk production by producers which is required by section 201(d)(3) of the Agricultural Act of 1949, as amended by the Food Secruity Act of 1985 (Pub. L. 99-198).

(s) *Dairy herd disposal* means the disposal of all dairy cattle in accordance with the provisions of this subpart and the contract.

(t) *Disposal period* means a period within which a producer must sell for slaughter or export all dairy cattle required to be sold by the contract.

(u) *Heifer* means any female dairy bovine which: (1) Weighs 500 pounds or more or is pregnant; and (2) has not yet had a calf.

(v) *Herd disposal completion date* means, except as otherwise specified in this subpart, the date on which the last of the participating producers in the contracting entity certifies to the satisfaction of CCC that the dairy cattle disposal which is required to be made by the end of the contract disposal period has been completed.

(w) *Interest in dairy cattle* means any ownership or financial interest of any kind, whether present, future, or conditional, in dairy cattle, including any interest as a lessee or lessor.

(x) *Interest in the production of milk* means sharing in the risk of production of or the proceeds from the sale of milk.

(y) *Marketed for commercial use* means milk which has been produced in the United States and also disposed of in the United States in raw or processed form by voluntary or involuntary sale, barter or exchange, or by gift.

(z) *Marketed milk* means milk produced in the United States and marketed for commercial use.

(aa) *Milk* means milk of dairy cows.

(bb) *Milk production facility* means all buildings used for the production or handling of milk.

(cc) *Nonproduction period* means the five-year period that begins on the day after the earlier of:

(1) The last day of the contract disposal period; or

(2) The herd disposal completion date.

(dd) *Participating producer* means any of the actual producers who is a party to a DTP contract.

(ee) *Person* means an individual, partnership, association, corporation, trust, estate, or other business enterprise or other legal entity or a State, a political subdivision of a State, or any agency thereof.

(ff) *Principal producer* means the producer who is designated on the contract as the person to receive communications from the county ASCS office concerning the contract.

(gg) *Producer* means any person who:

(1) Is involved in, contributes to, or has any interest, including any ownership or financial interest, in any unit that is used for the production of milk, and

(2) Shares in the risk and/or proceeds of the production of milk from such unit.

(hh) *Program regulations* means the regulations contained in this subpart.

(ii) *Related person* means with respect to any participating producer any person identified as a related person under the provisions of § 1430.454 of this subpart.

(jj) *Secretary* means the Secretary of Agriculture of the United States.

(kk) *Unit* means the dairy cattle, milk production facilities, and land used together to produce milk.

(ll) *United States* means, except as otherwise specified in this subpart, the forty-eight contiguous States in the continental United States.

§ 1430.453 Eligibility requirements.

(a) Except as provided in paragraph (c), in order for any producer to be eligible for payments under a contract under this subpart, all producers on all units with respect to which any participating producer or related person was a producer on January 1, 1986, must sign and be party to the same contract.

(b) Only those persons who were producers of milk in the United States as of the bid date are eligible for payments under the contract except with respect to an assignment of payments made pursuant to the terms and conditions of the contract and this subpart.

(c) The provisions of paragraph (a) shall not be applicable to any unit from which, at the election of the participating producers, no quantity of milk marketed for commercial use will be used to establish a contract base. However, with respect to any such unit:

(1) All dairy cattle on such unit on or after the bid date must be slaughtered or exported by the end of the contract disposal period;

(2) No milk production facility on any such unit may be used to produce milk during the five-year nonproduction period for the contract; and

(3) No new milk production facility may be utilized on such unit during the nonproduction period either for purposes of producing milk or to maintain dairy cattle.

(d) The contracting entity must submit a bid by the final date for submitting bids established by CCC for the program.

(e) Each participating producer must file, by the bid date, the herd report required by paragraph (h).

(f) A contract base must have been established for the contract by the bid date.

(g) All participating producers must sign the contract.

(h) Each participating producer must, by the bid date, file with the county ASCS office a report showing for all units with respect to which such producer or related person had an interest in dairy cattle or in the production of milk on January 1, 1985, January 1, 1986, or the bid date:

(1) The number of cows on each such unit as of each of those dates;

(2) The number of heifers on each such unit as each of those dates; and

(3) The number of calves on each of those units as of each of those dates.

(i) The herd report required by paragraph (h) shall also show:

(1) Any transfer on or after January 1, 1986, of any dairy cattle onto any unit, from which marketings of milk for commercial use will be used to establish a contract base;

(2) Any transfer on or after January 1, 1986, of any dairy cattle from any unit with respect to which any participating producer or related person had an interest in dairy cattle or in the production of milk on or after January 1, 1986; and

(3) Any dairy cattle with respect to which any participating producer or related person had an interest on or after January 1, 1986, if the participating producer or related person no longer has an interest in such dairy cattle.

(4) The disposition or status of all dairy cattle to which the provisions of paragraphs (i) (2) and (3) are applicable.

(j) At least one of the participating producers in the contracting entity must either:

(1) Have been actively engaged in the production of milk continuously from January 1, 1985 through the bid date unless CCC determines that such continuous production of milk was not possible due to dairy herd conditions beyond the producer's control; or

(2) Be entitled to claim the marketings of another producer toward the establishment of a contract base in accordance with the provisions of § 1430.455 of this subpart.

§ 1430.454 Related persons.

(a) For purposes of this subpart the following persons are considered to be "related persons" with respect to any participating producer and, in addition, the actions of such persons will be considered for compliance purposes and other purposes specified in this subpart to be the actions of the participating producer:

(1) The spouse and minor child of such producer and/or guardian of such child;

(2) Any corporation in which the producer is a stockholder, shareholder, or owner (except publicly-held corporations in which the producer has a less than one percent interest in such corporation);

(3) Any partnership, joint venture, or other enterprise in which the producer has an ownership interest or financial interest; and

(4) Any trust in which the participating producer or any person listed in paragraphs (a) (1) through (3) is a beneficiary or has a financial interest.

(b) If the participating producer is a corporation, partnership, or other joint venture, then, for purposes of applying paragraph (a), the participating producer shall be considered to be such corporation, partnership, or other joint venture, and each individual owner, participant, or stockholder therein, except for persons with less than a one percent share in a corporation.

§ 1430.455 Base establishment.

(a) A preliminary milk base shall be established for the contract based upon the quantity of milk marketed for commercial use by the participating producers from all units with respect to which any such person was a producer on the bid date. In establishing a preliminary milk base, a producer may only claim that quantity of milk marketed for commercial use with respect to which the producer shared in the risk of production and only to the extent that the producer was entitled to an individual share of the proceeds of such marketings. Notwithstanding the first sentence of this section, no quantity of milk marketed for commercial use from any unit to which the exemption in § 1430.453(c) is applicable shall be used to establish the preliminary milk base. The preliminary milk base for the contract shall be the lesser of the total quantities of milk marketed for commercial use which may be used to establish such base for the participating producers in the contracting entity for the following two periods: (1) The 12-month period ending June 30, 1985; and (2) the 12-month period ending December 31, 1985.

(b) Each producer must present acceptable evidence of the quantity of milk marketed for commercial use for the relevant periods to the county ASCS office.

(c) Except for dairy cattle slaughtered or exported by the bid date, the preliminary milk base shall be reduced by 20,000 pounds for:

(1) Each head of dairy cattle transferred on or after January 1, 1986, but before the bid date, from those units with respect to which any participating producer or related person was a producer on or after January 1, 1986; and,

(2) To the extent to which paragraph (c)(1) is not applicable, each head of dairy cattle in which any participating producer or related person had an interest on or after January 1, 1986, if, as of the bid date, no interest in such dairy cattle is retained by any participating producer in the contracting entity or related person with respect to any such producer. If the maximum interest which any such participating producer or related person had in such dairy cattle on or after January 1, 1986, was less than 100 percent, the 20,000 pound reduction provided for in this subparagraph shall be adjusted accordingly.

(d)(1) The preliminary milk base shall be adjusted in accordance with the provisions of paragraph (d)(2) if the number of cows as of the bid date on those units from which quantities of milk marketed for commercial use have been used to establish such base, less the number of all cows transferred onto such units on or after January 1, 1986, is less than 90 percent of: (i) The number of cows on those units on either January 1, 1985, or January 1, 1986; and (ii) the number of cows estimated needed to produce the preliminary milk base as adjusted under paragraph (c).

(2) If an adjustment is required under the provision of paragraph (d)(1), the preliminary milk base shall be further reduced to the extent necessary so that such base does not exceed the product of multiplying: (i) The number of cows as of the bid date on the units from which the quantities of milk marketed for commercial use have been used to establish such base, less the number of cows transferred onto such units on or after January 1, 1986, by (ii) the higher of: (A) 13,000 pounds or (B) the average annual milk production for the cows remaining on such units.

(3) For purposes of paragraph (d)(1), the estimated number of dairy cows needed to produce the preliminary milk base as adjusted in accordance with paragraph (c) shall be computed by dividing such adjusted base by 13,000 pounds.

(e)(1) Notwithstanding any other provision of this subpart, a participating producer may, in establishing a contract base, claim the quantity of milk marketed for commercial use by another producer if:

(i) The participating producer commenced the marketing of milk after December 31, 1984;

(ii) The other producer was or is a member of the family of the participating producer; and,

(iii) The other producer's entire herd and facility were transferred to the participating producer directly by reason of the death of, or gift from, the other producer.

The participating producer may only claim that quantity of milk marketed for commercial use which such other producer would have been entitled to claim in establishing a milk base if such other producer had been a producer on the unit as of the bid date.

(2) For purposes of this paragraph, a member of the family of the participating producer means:

(i) The parent, grandparent, or spouse of parent or grandparent, or legal guardian of such producer;

(ii) The spouse of such producer; or

(iii) The son, daughter, or grandson, or granddaughter of such producer, or the spouse of any such persons.

(f) The preliminary milk base as adjusted in accordance with the provisions of this section shall constitute the contract base. The contract base shall be determined by the county ASCS office. The adjustments provided for in this section shall be made to the extent practicable and CCC may make such additional adjustments in the contract base as are determined to be necessary in order to ensure that CCC receives the maximum value for the payments made by CCC under the program authorized by this subpart.

§ 1430.456 Bid submission.

(a) The bid shall be stated in a dollar amount per hundredweight to the nearest penny which, when multiplied by the contract base, shall equal the total payment which may be made by CCC under the contract if the bid is accepted. A producer's bid may not be withdrawn after the last date for bid submission established by CCC. CCC is not obligated to accept any bid and may give preference by contract disposal periods to submitted bids. The maximum bid per hundredweight which is accepted may vary by region if such variances are determined to be needed to avoid undue disruption of dairy markets. The bid shall be submitted by signing the contract which shall set forth the bid or bids of the producer(s). If a bid is accepted by CCC the requirements of the contract and this subpart shall be applicable even if, by reason of noncompliance with the eligibility requirements of § 1430.453 of this subpart, none of the participating producers are entitled to payment under the contract.

(b) A bid may be submitted for one or more of the three following disposal periods:

(1) April 1, 1986 through August 31, 1986;

(2) September 1, 1986 through February 28, 1987;

(3) March 1, 1987 through August 31, 1987.

(c) When a bid is accepted by CCC, a representative of CCC will sign the contract and a copy of the executed contract will be supplied to each participating producer. The period for which the bid is accepted shall be the contract disposal period.

§ 1430.457 Dairy herd disposal and nonproduction period requirements.

(a) All dairy cattle, which on or after the bid date were located on any unit with respect to which any participating producer or related person was a producer on or after January 1, 1986, shall be sold for slaughter or export by the end of the contract disposal period in accordance with the provisions of § 1430.458 of this subpart. In addition, all dairy cattle in which any such producer or related person had an interest on or after the bid date shall be so sold by the end of the contract disposal period.

(b) During the five year nonproduction period as calculated under the provisions of § 1430.459 of this subpart, no participating producer or related person may have, retain, or acquire any interest in dairy cattle or in the production of milk.

(c) No participating producer or related person shall, during the nonproduction period, acquire or make available to any person any production facility that becomes available for use as a result of the compliance by any person with any DTP contract. This restriction shall be considered to include, but not be limited to, any milk production facility used by any participating producer or related person on or after January 1, 1986, to produce milk. The use by any person of such a facility during the nonproduction period for a contract shall be a violation of the terms and conditions of the contract regardless of whether the participating producer or related person owns, or has owned, the milk production facility.

(d) No milk production facility on any unit with respect to which any participating producer or related person was a producer on or after January 1, 1986, may be used by any person to produce milk or to maintain dairy cattle during the nonproduction period and no new milk production facility may be brought into use on such unit during the nonproduction period.

(e) Unless CCC shall otherwise agree in writing, if any participating producer or related person involuntarily acquires an interest in dairy cattle or in the production of milk as a result of the death of another person or otherwise, the total amount of payments which are due under the contract shall be reduced by the amount of any gross proceeds realized by any such producer or related person from the use or sale of such interest.

§ 1430.458 Sales for slaughter or export.

(a) All dairy cattle which are required to be sold for slaughter or export under the provisions of this subpart shall be branded if such dairy cattle have not been sold by the date that the principal producer receives notice that the contract has been accepted by CCC.

(b) There may be no more than one intermediate purchase of any dairy cattle which are required to be sold for slaughter or export under the provisions of this subpart between the date of sale for that purpose and the date of the actual slaughter or export of such dairy cattle.

(c) The participating producers in the contracting entity shall be responsible for ensuring that any purchaser of dairy cattle which are sold to meet the requirements of the contract has, with respect to each such sale, signed a notice on a CCC-approved form listing the type, weight, price and final slaughter or export date for the dairy cattle. Such notice will not relieve the participating producers of their liability for any failure of such cattle to be slaughtered or exported by the required date. Any such failure shall be a violation of terms and conditions of the contract. Each notice signed by a purchaser of dairy cattle as prescribed in this paragraph shall be submitted to the county ASCS office by the tenth day of the month following the month in which the sale to meet the requirements of the contract occurred.

(d) Not more than 50 percent of the dairy cows on any unit to which the requirements for slaughter and export in this subpart are applicable may be slaughtered before the beginning of the contract disposal period.

(e)(1) Except as provided in paragraph (e)(2), all dairy cattle which are to be sold for slaughter or export in accordance with the terms and conditions of the contract must be slaughtered or exported by the end of the contract disposal period.

(2) Notwithstanding the provisions of paragraph (e)(1), if the contract disposal period ends on August 31, 1986, calves and unbred (nonpregnant) heifers may be slaughtered not later than September 30, 1986. In addition, with respect to contracts entered into for the third disposal period, CCC may permit dairy cattle sold for export to be exported not later than September 30, 1987.

(f) Subject to the final date for slaughter or exports as prescribed by the provisions of paragraph (e), the sale of dairy cattle for slaughter or export shall be subject to the following additional time limitations:

(1) All cows and bred (pregnant) heifers sold for slaughter must be slaughtered within 15 days from the date such cows and bred heifers were sold for that purpose;

(2) Calves and unbred heifers sold for slaughter must be slaughtered within six months from the date such calves and unbred heifers were sold for that purpose;

(3) Dairy cattle sold for export must be exported within 45 days from the date such cattle have been sold for that purpose.

(g) Dairy cattle sold for export shall be considered to have been exported only if such cattle are exported outside the fifty States of the United States, its territories and possessions and do not reenter the fifty States of the United States, its territories and possessions at any time after such export.

(h) In order to establish the export or slaughter of any head of dairy cattle, the contracting entity must present to the county ASCS office with respect to such cattle:

(1) All sales receipts relating to such sale including any receipt generated by a sale by an intermediate buyer;

(2) All notices required by this subpart to be signed by the purchasers of such cattle; and

(3)(i) For any dairy cattle sold for slaughter, a certificate of slaughter by the slaughtering party unless other acceptable evidence of slaughter has been presented;

(ii) For any dairy cattle exported to a country other than Canada or Mexico, a certificate of inspection showing the export of the dairy cattle issued by the Animal and Plant Health Inspection Service, United States Department of Agriculture; and,

(iii) For any dairy cattle exported to Canada or Mexico, a certification of exportation issued by United States customs officials or a certification of importation by officials of the importing country, unless other acceptable evidence of export to Canada or Mexico is presented.

(i) Any dairy cattle which are destroyed because of disease or for any other reason shall be considered to have been sold for slaughter.

§ 1430.459 Payments.

(a) The total amount of payments which may be made by CCC to a contracting entity under the contract shall be that amount which is equal to the accepted bid miltiplied by the contract base. Such amount shall be paid by CCC only if it has been determined that there has been compliance with all of the terms and conditions of the regulations and the contract. If any terms, conditions, or requirements of the contract are not met, payments previously made by CCC shall be refunded and no further payments shall be made by CCC.

(b) Not later than 30 days following the end of the contract disposal period each participating producer shall file a certification showing whether the following dairy cattle have been exported or slaughtered:

(1) All dairy cattle, which, on or after the bid date, were on any unit with respect to which the producer or related person was a producer on or after January 1, 1986;

(2) Any dairy cattle with respect to which such producer or related person had an interest at any time on or after the bid date.

(c) If the contract disposal period ended August 31, 1986, the certification required by paragraph (b) may be filed on or before October 30, 1986.

(d) The herd disposal completion date for purposes of the contract and this subpart shall be the date of filing of the last certification which is required to be filed by participating producers under the provisions of paragraph (b).

(e) The five-year nonproduction period for the contract shall be the period which begins on the day after the earlier of:

(1) The end of the contract disposal period; or

(2) The herd disposal completion date.

(f) Each participating producer's share of the total contract payment shall be indicated on the face of the contract. After the acceptance of a bid, each producer shall elect one of the two following schedules for receiving payment of the producer's share:

(1) A schedule by which not more than 80 percent of the share will be paid by CCC within 30 days of the herd disposal completion date with the remainder to be paid in four equal installments within 30 days of each of the next four anniversaries of such date; or

(2) A schedule by which not more than 85 percent of the share will be paid on the first anniversary of the herd disposal completion date with the remainder to be paid in three equal installments payable within 30 days of each of the next three anniversaries of that date.

(g) On or within 30 days following each of the first five anniversaries of the herd disposal completion date, each participating producer shall certify to the county ASCS office whether there has been compliance with the requirements of the contract. The failure of any participating producer to file such a certification shall render all of the participating producers and any other person ineligible for any payment under the contract including any payments previously made. Payments previously made shall be refunded to CCC. If any participating producer has failed to file the certification required by paragraph (b), the herd disposal completion date for purposes of this paragraph shall be considered to be the date on which the contract disposal period ended. The filing by any participating producer of the certification required by this paragraph after the first day on which such certification could be filed shall extend commensurately the time by which CCC shall make payment of any payment that becomes due with respect to the anniversary of the herd disposal completion date to which the certification is applicable.

§ 1430.460 Producer and purchaser penalties.

(a) (1) A participating producer shall be subject to a marketing penalty if such producer or related person as specified in § 1430.454 retains or acquires an interest in dairy cattle or the production of milk in violation of the terms and conditions of a contract entered into under this subpart. Such penalty shall be in additon to any other amount due CCC under this subpart and shall be applied against the full quantity of milk to which the interest in milk production applies and/or the full quantity of milk produced by the dairy cattle to which the interest applies. Such penalty shall be computed at the support price for milk in effect (as established in accordance with the provisions of 7 U.S.C. 1446) during the period in which the milk production occurred.

(2) Each person who makes a false statement with respect to a contract as to: (i) The quantities of milk marketed for commercial use by a producer, or (ii) the size or composition of the dairy herd that produced such marketings, or (iii) the size or composition of the dairy herd at the time the bid is submitted, shall be subject, in addition to any other amount due CCC, to a civil penalty of $5,000 for each head of dairy cattle to which such statement applied.

(3) In addition to any other amount due CCC, each person who makes a false statement as to the number of dairy cattle that were sold for slaughter or export under a contract under this subpart shall be subject to a civil penalty of not more than $5,000 for each head of cattle to which such statement applied.

(4) Each person who buys one or more head of dairy cattle sold for

slaughter or export because of a DTP contract, who knows that such cattle are sold for slaughter or export, and who, after receiving such cattle, fails to cause the slaughter or export of such cattle within the time limits for slaughter or export as prescribed by § 1430.458 of this subpart, shall be liable for a civil penalty of not more than $5,000 with respect to each head of such cattle to which such failure of slaughter or export is applicable.

(5) Each person who knowingly violates any other provision of this subpart shall be liable for a civil penalty of not more than $1,000 for each such violation.

(b) Penalties under this subpart shall be assessed after notice and opportunity for an informal administrative hearing.

(c) Interest shall accrue on penalties at the rate which CCC is required to pay for its borrowing from the United States Treasury at the time the penalty is assessed. Further, the penalties assessed under this subpart shall be subject to late payment charges in the same manner and at the same rate which is set forth at 7 CFR Part 1403 with respect to delinquent debts which are owed to CCC.

§ 1430.461 Misrepresentation, scheme and device, and fraud.

(a) If CCC determines that any participating producer has erroneously represented any fact or has adopted, participated in, or benefitted from, any scheme or device which has the effect of, or is designed to, defeat the purpose of this subpart and/or the contract, no person shall be eligible for payments under the contract and all payments previously made to any person under the contract shall be refunded to CCC. The amount paid to CCC shall include any interest or related charges as are prescribed in § 1430.462 of this subpart.

(b) If any misrepresentation, scheme or device or practice has been employed for the purpose of causing CCC to make a payment under a DTP contract which CCC otherwise would not make, all amounts paid by CCC under the contract to any person shall be refunded to CCC together with interest and related charges as provided for in § 1430.462 of this subpart, and no further payments shall be made by CCC.

(c) If the county committee finds that any person has adopted or participated in any practice which tends to defeat the purpose of the program, the county committee may withhold or require to be refunded all or part of the payments which otherwise would be due the producer under the program.

§ 1430.462 Refunds to CCC; joint and several liability.

(a) In the event that there is a failure to comply with any term, requirement, or condition for payment arising under the contract, or this subpart, or if any refund of a contract payment to CCC shall otherwise become due in connection with the contract, all payments made under the contract to any person shall be refunded to CCC, together with interest and late payment charges as provided for in this paragraph.

(b) The participating producers in the contracting entity shall be jointly and severally liable for any refund, including related charges, which is determined to be due CCC for any reason under the terms and conditions of the contract or this subpart.

(c) Interest shall be charged with respect to any refund which is determined to be due CCC at the rate of interest which CCC is required to pay for its borrowings from the United States Treasury as of the date of the disbursement by CCC of the monies to be refunded. Interest shall accrue from the date of such disbursement by CCC. Upon the sending of the notification of the debt by CCC to the principal producer, no additional interest charges shall be assessed. However, the account shall thereafter bear late payments charges to be assessed in accordance with the provisions of, and subject to the rates prescribed in, 7 CFR Part 1403. If, for any reason, no late payment charges may be assessed with respect to such account under the provisions of 7 CFR Part 1403, additional charges on the account will accrue at the rate equal to the current rate for CCC borrowings from the

United States Treasury plus three percent per annum.

(d) Participating producers who are party to a DTP contract must refund to CCC any excess payments made by CCC with respect to such contract.

(e) In the event that the contract base was established as a result of erroneous information provided by any person to the county ASCS office or was erroneously computed by such office, the contract base shall be recomputed and the payments due under the contract shall be corrected as necessary. Any refund of payments which are determined to be required as a result of such recomputation of the contract base shall be remitted to CCC.

§ 1430.463 Cumulative liability.

The liability of any person for any penalty under this subpart or for any refund to CCC or related charge arising in connection therewith shall be in addition to any other liability of such person under any civil or criminal fraud statute or any other statute or provision of law including, but not limited to, 18 U.S.C. 286, 287, 371, 641, 1001; 15 U.S.C. 714m; and 31 U.S.C. 3729.

§ 1430.464 Assignments of payments.

Payments which are earned by a producer under a DTP contract may be assigned in accordance with the provisions of 7 CFR Part 709, except that such assignments may also be made to secure or pay pre-existing indebtedness.

§ 1430.465 Setoffs and withholdings.

The regulations issued by the Secretary of Agriculture with respect to setoffs and withholdings, 7 CFR Part 13, and any amendments thereto shall be applicable to the Dairy Termination Program authorized by this subpart. Any amount due CCC under the program provided for in this subpart shall be subject to setoffs and withholdings pursuant to those regulations.

§ 1430.466 Appeals.

Reconsideration and review of the determinations made under this subpart shall be made in accordance with the Administrative Appeal Regulations, 7 CFR Part 780. If any penalty determination is delegated to any agency of the Department other than ASCS such determination shall be made by such delegatee under procedures which, as near as practicable, shall comport with Part 780.

§ 1430.467 Performance based upon advice of action of county or State committee.

The provisions of 7 CFR Part 790 and any amendments thereto, relating to performance based upon action or advice of an authorized representative of the Secretary shall be applicable to this subpart.

§ 1430.468 Miscellaneous provisions.

(a) It is the responsibility of participating producers that CCC, or its designee, have full and complete access to all units with respect in which any of the participating producers or related persons was a producer on or after January 1, 1986, and any unit on which were located any dairy cattle in which any such person had an interest in dairy cattle on or after that date.

(b) Each participating producer or knowing purchaser of dairy cattle sold pursuant to a DTP contract must, for a period three years from the date of the nonproduction period under this contract or for such longer period as CCC may specify, keep, maintain, and make available to CCC all records which CCC may require to enforce provisions of the contract, as well as any records necessary to establish compliance with the terms and conditions of this contract of this subpart.

(c) Any payment which is due any person shall be allowed without regard to questions of title under State law and without regard to any claim or lien against the unit or any milk produced from the unit, and the proceeds, thereof, which may be asserted by any creditor, except agencies of the United States Government.

(d) There shall be no succession of interest in any DTP contract except that, upon the death of a participating producer, the estate of such producer may perform the obligations of the producer under the contract or, upon approval of the CCC, may assign the contract.

(e) Notwithstanding any other provisions of this subpart, the retention or holding of dairy cattle otherwise prohibited by this subpart may be permitted if the Executive Vice President, CCC, or the Executive Vice President's designee, determines that such retention will not defeat the goals of the Dairy Termination Program.

(f) The participating producer shall execute all certifications specified in the contract or required by CCC or any other representative of the Department in the administration of this subpart.

(g) The burden shall be on participating producers to establish compliance with the requirements of the contract and this subpart. In addition, buyers of dairy cattle to which a DTP contract applies shall have the burden of establishing compliance with the provisions of this subpart.

§ 1430.469 Other regulations.

The following regulations and amendments thereto shall also be applicable to this subpart:

(a) 7 CFR Part 13—Setoffs and Withholdings;

(b) 7 CFR Part 707—Payments Due Persons Who Have Died, Disappeared or Have Been Declared Incompetent;

(c) 7 CFR Part 780—Appeal Regulations;

(d) 7 CFR Part 790—Incomplete Performance Based Upon Action or Advice of an Authorized Representative of the Secretary;

(e) 7 CFR Part 791—Authority to Make Payments When There Has Been a Failure to Comply Fully With the Program;

(f) 7 CFR Part 796—Harvesting of Marijuana or Other Such Drug-Producing Plants for Illegal Use; and

(g) 7 CFR Part 1403—Interest on Delinquent Debts.

§ 1430.470 Paperwork Reduction Act assigned numbers.

The information collection requirements contained in these regulations (7 CFR Part 1430) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0560-0124.

PART 1434—HONEY

Subpart—Honey Price Support Regulations Governing 1986 through 1990 Crops

Sec.

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1434.36 Paperwork Reduction Act assigned numbers.

AUTHORITY: 7 U.S.C. 1421 and 1446; 15 U.S.C. 714b and 714c.

Subpart—Honey Price Support Regulations Governing 1986 through 1990 Crops

SOURCE: 47 FR 35170, Aug. 13, 1982, unless otherwise noted.

§ 1434.1 Applicability.

(a) The regulations of this part are applicable to the 1989 and subsequent crops of extracted honey. These regulations set forth the terms and conditions under which price support loans shall be entered into by the Commodity Credit Corporation ("CCC"). Additional terms and conditions are set forth in the note and security agreement which must be executed by a producer in order to receive price support.

(b) The forms for use in connection with this program shall be prescribed by CCC. The forms may be obtained in State and county ASCS offices.

[54 FR 41588, Oct. 11, 1989]

§ 1434.2 Administration.

(a) The price support program which is applicable to a crop of honey shall be administered under the general supervision of the Administrator, ASCS, and shall be carried out in the field by State and county Agricultural Stabilization and Conservation committees ("State and county committees", respectively).

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this part.

(c) The State committee shall take any action required by these regulations which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, an action taken by such county committee which is not in accordance with the regulations of this part; or

(2) Require a county committee to withhold taking any action which is not in accordance with the regulations of this part.

(d) No provision or delegation herein to a State or county committee shall preclude the Administrator, ASCS, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator, State and County Operations, ASCS, may authorize State and county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not affect adversely the operation of the price support program.

(f) A representative of CCC may execute price support loans and related documents only under the terms and conditions determined and announced by CCC. Any such document which is not executed in accordance with such terms and conditions, including any purported execution prior to the date authorized by CCC, shall be null and void.

[54 FR 41588, Oct. 11, 1989]

§ 1434.3 Eligible producers.

(a) *Producer.* An eligible producer shall be a person (i.e., an individual, partnership, association, corporation, estate, trust, or other legal entity) who:

(1) Extracts honey produced by bees owned by the producer;

(2) Meets the eligibility requirements prescribed in 7 CFR Part 12.

(b) *Estates and trusts.* A receiver or trustee of an insolvent or bankrupt debtor's estate, an executor or an administrator of a deceased person's estate, a guardian of an estate or a ward of an incompetent person, and trustees of a trust estate shall be considered to represent the insolvent or bankrupt debtor, the deceased person, the ward or incompetent, and the beneficiaries of a trust, respectively, and the production of the receiver, executor, administrator, guardian, or trustee shall be considered to be the production of the person or estate represented by the executor or administrator. Loan or purchase documents executed by any such person will be accepted by CCC only if they are legally valid and such person has the authority to sign the applicable documents.

(c) *Eligibility of minors.* A minor who is otherwise an eligible producer shall be eligible for price support only if the minor meets one of the following requirements:

(1) The right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and the applicable price support documents are signed by the guardian;

(3) Any note signed by the minor is cosigned by a financially responsible person; or

(4) A bond is furnished under which a surety guarantees to protect CCC from any loss incurred for which the minor would be liable had the minor been an adult.

(d) *Approved cooperative.* A cooperative marketing association which is approved by the Executive Vice President, CCC, pursuant to Part 1425 of this chapter, to obtain price support on a crop of extracted honey may obtain price support on the eligible production of such crop of the honey on behalf of its members. The term "producer" as used in this subpart and on applicable price support forms shall refer both to an eligible producer as defined in paragraphs (a), (b), and (c) of this section and to such an approved cooperative marketing association.

(e) *Approval by county committee.* A producer may be denied price support on farm-stored honey if the producer has:

(1) Been convicted of a criminal act;

(2) Made a false misrepresentation in connection with any price support program;

(3) Made unlawful disposition of any loan collateral; or

(4) Caused the county committee difficulty in settling a loan due to failure to comply with the terms and conditions set forth in the note and security agreement or other instrument used in obtaining price support.

The county committee may deny price support to such producer until it is satisfied that CCC will be fully protected against any possible loss other than loss assumed by CCC under the regulations in this subpart.

(f) *Joint loans*—(1) *Farm storage.* Two or more eligible producers may obtain a joint loan on eligible honey produced and extracted by them if such honey is stored in the same farm storage facility. However, in lieu of obtaining a joint loan, each producer may obtain an individual loan on that producer's share of the honey stored in separate containers if such producer obtains an agreement from the other producers having honey stored in the facility stating that they are aware that a portion of the honey in the storage facility is being placed under price support loan and they will obtain permission from the county office before removing any honey from the facility.

(2) *Warehouse storage.* Two or more producers may obtain a warehouse storage loan if the warehouse receipt is issued jointly to such producers. Each producer who is a party to a joint loan will be jointly and severally responsible and liable for the breach of the obligations set forth in the loan documents and in the applicable regulations in this subpart.

(g) *Warehouse storage loans to warehousemen.* Except as provided in § 1434.10, warehouse storage loans may be made to a warehouseman who tenders to CCC, in the capacity as a producer, warehouse receipts issued by the warehouseman on honey produced and extracted by the warehouseman where the issuance and pledge of such warehouse receipts is permitted under State law.

(h) *Ineligibility.* If the Secretary of Agriculture, or a designee, determines that a producer knowingly pledged adulterated or imported honey as collateral to secure a price support loan, such producer shall, in addition to any other penalties or sanctions prescribed by law, be ineligible for any honey price support benefit for 3 crop years succeeding such determination.

[47 FR 35170, Aug. 13, 1982, as amended at 51 FR 25853, July 17, 1986; 51 FR 36930, Oct. 16, 1986; 52 FR 11619, Apr. 10, 1987]

§ 1434.4 Eligibility requirements.

(a) *Requesting price support.* In order to obtain price support on eligible honey, a producer must request a price support loan or notify the county office of an intention to sell honey by delivering a completed Purchase Agreement (Form CCC-614), no later than March 31 of the year following the year in which the honey was produced and extracted.

(b) *Beneficial interest.* To be eligible for price support, the beneficial interest in the honey must be in the producer tendering the honey as security for a loan or for purchase and must always have been in the producer or in such producer and a former producer whom the producer succeeded before such honey was extracted. However, heirs shall be eligible for price support as producers whether such succession occurs before or after extraction of honey, if such heirs:

(1) Succeed to the beneficial interest of a deceased producer;

(2) Assume the decedent's obligation under a loan if a loan has already been obtained; and

(3) Assure continued safe storage of the honey if such honey has been placed under farm storage loan.

A producer shall not be considered to have divested the beneficial interest in the honey if the producer enters into a contract to sell or gives an option to buy the honey and, under such contract or option, the producer retains control, risk of loss, and title to the honey. Honey purchased by a producer shall not be eligible for price support, except in the case of heirs of a deceased producer. If price support is made available through an approved cooperative marketing association, the beneficial interest in the honey must always have been in the producer-members who delivered the honey to the approved cooperative or its member cooperatives or must always have been in them and former producers whom they succeeded before the honey was extracted. Honey so delivered to a cooperative marketing association shall not be eligible for price support if the producer-members who delivered the honey to the cooperative or its member cooperatives do not retain the right to share in the proceeds from the marketing of the honey as provided in Part 1425 of this chapter.

(c) *Succession of interest.* To meet the requirements of succession to the beneficial interest of a former or deceased producer under paragraph (b) of this section, the rights, responsibilities, and interest of the former producer with respect to the ownership of the bees which produced the honey shall have been substantially assumed by the person claiming succession. Mere purchase or inheritance of the honey before extraction without acquisition of any additional interest in the production unit shall not constitute succession to such beneficial interest.

(d) *Doubtful cases.* Any producer or cooperative in doubt as to whether the beneficial interest in the honey complies with the requirements of this section shall, before requesting price support, make available to the county committee all pertinent information which will permit a determination with respect to the beneficial interest to be made by CCC.

(e) *Redeemed loan collateral.* Before the final availability date, a producer may reoffer as security or repledge as collateral for a new loan any honey that has been previously so mortgaged or pledged, except that honey which has been redeemed at a level which is less than the loan level determined in accordance with § 1434.25(d)(1)(ii), may not be reoffered as security or repledged as collateral for a new loan. Producers who redeem honey at the lower loan repayment level shall provide CCC with (1) evidence of disposition of the redeemed honey such as sales receipts or other written documentation acceptable to CCC or (2) the storage location of the redeemed honey which has not been otherwise disposed of and allow CCC access to such honey.

[47 FR 35170, Aug. 13, 1982, as amended at 51 FR 25853, July 17, 1986; 52 FR 6776, March 5, 1987; 52 FR 11619, Apr. 10, 1987; 52 FR 48082, Dec. 18, 1987]

§ 1434.5 Miscellaneous requirements.

(a) *Security.* The county office shall file or record, as required by State law, all security agreements which cover honey under loan and stored on leased premises. The cost of filing and recording shall be for the account of CCC.

(b) *Revenue stamps.* Farm Storage Note and Security Agreements, and Warehouse Storage Note and Security Agreements must have State and documentary revenue stamps affixed thereto where required by law.

(c) *Restrictions in use of agents.* A producer shall not delegate to any person (or the person's representative) who has any interest in storing, processing, or merchandising honey which is otherwise eligible for price support under a program to which this subpart is applicable authority to exercise, on the behalf of the producer, any of the producer's rights or privileges under such program, including the authority to execute any note and security agreement or other price support document, unless the person (or the person's respresentative) to whom authority is delegated, is serving in the capacity of a farm manager for the producer.

§ 1434.6 Availability, disbursement, maturity, and expiration of loans.

(a) *Where to request price support.* A producer shall request price support on farm-stored honey at the county office of the county where the honey is stored. A producer shall request price support on warehouse-stored honey at the county office of the county where the warehouse is located or at the county office of the county where the beekeeper is headquartered. An approved cooperative marketing association must request price support at the county office for the county in which the principal office of the cooperative is located unless the State committee designates some other county office. In the case of an approved cooperative marketing association having operations in two or more States, requests may be made at the county office for the county in which its principal office for each such State is located.

(b) *Availability, maturity, and expiration dates.* Price support loans and purchase agreements are available to producers as soon as the loan and purchase rates are announced but not earlier than April 1 of the year in which the honey is produced and extracted and not later than March 31 of the year following the year in which the honey is produced and extracted. However, whenever the final date of availability falls on a nonworkday for county offices, the applicable final date shall be extended to include the next workday. If the loan is not disbursed by the last day of the calendar month following the month in which the loan application is made, the producer must reapply for a loan, unless CCC determines that the delay was caused by reasons beyond the producer's control. Purchase agreements expire and price support loans mature on demand but not later than the last day of the ninth calendar month following the month in which the loan application is made. However, when the final date of expiration or maturity falls on a nonworkday for county offices the applicable final date shall be extended to include the next workday.

(c) *Disbursement of loans.* Disbursement of loans will be made by county offices by drafts drawn on the account of CCC or by credit to the producer's account, except that loans may be disbursed by approved servicing banks to approved cooperative marketing associations. The loan documents shall not be presented for disbursement unless the honey covered by the mortgage or pledge is in existence, has been extracted and is in approved storage. If the honey was not either in existence, extracted, or in approved storage at the time of disbursement, the total amount disbursed under the loan shall be refunded promptly by the producer.

[47 FR 35170, Aug. 13, 1982, as amended at 51 FR 25854, July 17, 1986; 52 FR 6776, Mar. 5, 1987; 52 FR 11619, Apr. 10, 1937; 52 FR 48082, Dec. 18, 1987]

§ 1434.7 Eligible honey.

Honey must meet the requirements of this section in addition to other applicable eligibility requirements of this subpart in order to be eligible for a loan or for delivery under a loan or purchase. Honey described in § 1434.8 is not eligible for price support.

(a) *Production.* The honey must have been produced in the United States by an eligible producer during the calendar year for which price support is requested and extracted on or before December 31 of such calendar year.

(b) *Floral source.* Honey from the floral sources listed below and honey having similar flavor shall be eligible for price support and shall be classed as follows:

(1) *Table honey.* Table honey means honey having a good flavor of the predominant floral source which can be readily marketed for table use in all parts of the country. Such sources include alfalfa, bird's-foot trefoil, blackberry, brazil brush, catsclaw, clover, cotton, fireweed, gallberry, huajillo, knapweed (American), lima bean, mesquite, orange, raspberry, sage, saw palmetto, sourwood, soybean, star thistle (barnaby's thistle), sunflower, sweet clover, tupelo, vetch, western wild buckwheat, wild alfalfa, and similar mild flavors or blends of mild-flavored honeys as determined by the Director, Cotton, Grain, and Rice Price Support Division, ASCS.

(2) *Nontable honey.* Nontable honey means honey having a predominant flavor of limited acceptability for table use but which may be considered suitable for table use in areas in which it is produced. Such honeys include those with a predominant flavor of aster, athel, avocado, Brazilian pepper, buckwheat (except western wild buckwheat), cabbage palmetto, Chinese tallow, dandelion, eucalyptus, goldenrod, heartsease (smartweed), horsemint, kiawe, macadamia, mangrove, manzanita, mint, partridge pea, rattan vine, safflower, salt cedar (Tamarix Gallica) spanish needle, spikeweed, titi, toyon, tulip-poplar, wild cherry, and similarly-flavored honey or blends of such honeys as determined by the Director, Cotton, Grain, and Rice Price Support Division, ASCS.

(c) *Containers.* The honey must be packed in metal containers of a capacity of not less than 5 gallons or greater than 70 gallons. All containers shall meet the requirements of the Federal Food, Drug, and Cosmetic Act, as amended, and regulations issued thereunder. However, the container requirements provided in this paragraph (c) may be waived by CCC if a producer agrees to redeem, pursuant to the lower loan repayment provisions contained in § 1434.25(d) and within a time period specified by CCC, honey pledged by the producer for a price support loan.

(1) *Five-gallon.* The 5-gallon containers must hold approximately 60 pounds of honey and shall be new, clean, sound, uncased, and free from appreciable dents and rust. The handle of each container must be firm and strong enough to permit carrying the filled container. The cover and can opening must not be damaged in any way that will prevent a tight seal. Cans which are punctured or have been punctured and resealed by soldering will not be acceptable.

(2) *Steel drums.* Steel drums must be open-end type and filled no closer than 2 inches from the top of the drums. In addition, such drums must be new or must be used drums which have been reconditioned inside and outside. They must be clean, treated to prevent rusting, and fitted with gaskets which provide a tight seal.

(d) *Moisture requirements.* To be eligible for price support, honey must not contain in excess of 18.5 percent moisture.

[47 FR 35170, Aug. 13, 1982, as amended at 48 FR 15121, Apr. 7, 1983; 49 FR 24879, June 18, 1984; 52 FR 11619, Apr. 10, 1987; 52 FR 48082, Dec. 18, 1987]

§ 1434.8 Ineligible honey.

(a) *Floral source.* Honey from the following floral sources is not eligible for price support regardless of whether it meets other eligibility requirements: Andromeda, bitterweed, broomweed, cajeput (melaleuca), carrot, chinquapin, dog fennel, desert hollyhock, gumweed, mescal, onion, prickly pear, prune, queen's delight, rabbit brush, snowbrush (ceanothus), snow-on-the-mountain, spurge (leafy spurge), tarweed, and similar objectionably-flavored honey or blends of honey as determined by the Director, Cotton, Grain, and Rice Price Support Division, ASCS. If any blends of honey contain such ineligible honey, the lot as a whole shall be considered ineligible for loan or delivery for purchase.

(b) *Adulteration.* Honey which is adulterated is not eligible for price support. Honey shall be considered adulterated if:

(1) Any substance has been substituted wholly or in part for such honey;

(2) Such honey contains a poisonous or deleterious substance that may render such honey injurious to health, except that in any case in which such substance is not added to honey, such honey shall not be considered adulterated if the quantity of such substance in or on such honey does not ordinarily render it injurious to health; or

(3) Such honey is for any other reason unsound, unhealthy, unwholesome, or otherwise unfit for human or animal consumption.

(c) *Containers.* Honey which is stored:

(1) In steel drums having a tare weight less than 38 pounds or having removable liners of polyethylene or other materials,

(2) In bung-type drums, or

(3) In bulk tanks, is not eligible for price support regardless of whether it meets other eligibility requirements.

(d) *Heat damage.* Honey which has been scorched, burned, or subjected to excessive heat resulting in objectionable flavor, color deterioration or carmelization shall be ineligible for price support.

[47 FR 35170, Aug. 13, 1982, as amended at 48 FR 15121, Apr. 7, 1983; 48 FR 34416, July 29, 1983; 51 FR 25854, July 17, 1986]

§ 1434.9 Approved storage.

(a) *Loans.* Loans will be made only on honey in approved storage as defined in this section.

(1) *Farm storage.* Approved farm storage shall consist of a storage structure located on or off the farm (excluding public or commercial warehouses) which is determined by the county committee to be under the control of the producer and to afford safe storage for honey. Producers may also obtain loans on honey packed in eligible containers and stored on leased space in facilities owned by third parties in which the honey of more than one person is stored if the honey which is to be placed under loan and which is stored on such leased space is segregated from all other honey. Each container of the segregated quantity of honey shall be marked with the producer's name and lot number so as to identify the honey from other honey stored in the structure. If the honey which is to be pledged as collateral for a price support loan is stored on leased space, a copy of the lease shall be obtained by the county office before a loan is made. The lease shall authorize the producer and any person having an interest in the honey to enter on the premises to inspect and examine the honey and shall permit a reasonable time to such persons to remove the honey from the premises upon the termination of the lease.

(2) *Warehouse storage.* Approved warehouse storage or an approved warehouse shall consist of (i) a public warehouse for which a CCC Honey Storage Agreement is in effect and which is approved for price support purposes or (ii) a warehouse operated by an approved cooperative as defined in § 1434.3(d) and licensed to store honey under the United States Warehouse Act.

(b) *Segregation of loan collateral.* If the honey located in a storage structure is pledged as collateral that secures more than one loan, the honey must be segregated so as to preserve the identity of the honey securing each such loan. Honey securing a loan must also be segregated from any honey not pledged as collateral for a price support loan which is stored in the same structure.

§ 1434.10 Warehouse receipts.

(a) *General.* Warehouse receipts representing honey to be placed under a warehouse storage loan, delivered in satisfaction of a farm storage loan, or delivered in accordance with purchase agreements must meet the requirements of this section, any other requirements contained in the regulations in this subpart, and in any notice in the FEDERAL REGISTER pertaining thereto. A separate warehouse receipt must be submitted for each class, color, floral source, quality, and grade of honey.

(b) *Manner of issuance and endorsement.* Warehouse receipts must be issued in the name of the eligible producer or CCC. If issued in the name of the eligible producer, the receipts must be properly endorsed in blank so as to vest title in the holder. Receipts must be issued by an approved warehouse and indicate that the honey is stored identity preserved in eligible containers. The receipts must be negotiable, must cover eligible honey actually in storage in the warehouse, and must be registered or recorded with appropriate State or local officials when required by State law.

(c) *Entries.* Each warehouse receipt or extracted honey inspection and weight certificate properly identified with the warehouse receipt must be issued in accordance with the Honey Storage Agreement or United States Warehouse Act, if applicable, and must show the following information:

(1) That the honey is stored identity preserved in containers;

(2) Number of containers;

(3) Size of containers;

(4) Gross weight;

(5) Net weight;

(6) Lot number;

(7) Average moisture for quantity represented by the receipt; and

(8) Class, color, floral source, and grade.

(d) *Extracted honey inspection and weight certificate.* When an extracted honey inspection and weight certificate is issued, it must show the following additional information:

(1) Warehouse receipt number;

(2) Lot number;

(3) Number and size of containers;

(4) Class, color, floral source, and grade; and

(5) Net weight.

(e) *Where warehouseman is also owner.* If the warehouse receipt is issued for honey which is owned by the warehouseman either solely, jointly, or in common with others, the fact of such ownership shall be stated on the receipt. In States where the pledge of warehouse receipts issued by a warehouseman on the warehouseman's honey is invalid under State law, the warehouseman may offer the honey to CCC for loan or purchase if such warehouse is licensed and operating under the United States Warehouse Act. In such States, if the warehouseman is not licensed and operating under the U.S. Warehouse Act, the warehouseman may deliver the honey to CCC for purchase if the warehouse receipt is issued in the name of CCC.

(f) *Insurance.* Each warehouse receipt representing honey stored in an approved warehouse which has a honey storage agreement with CCC shall indicate that the honey is insured in accordance with such agreement.

§ 1434.11 Warehouse charges.

Before the honey is placed under warehouse storage loan or acquired by purchase by CCC, the producer shall arrange for payment of storage, inspection, and all other charges (except receiving and loading-out charges in the warehouse in which the honey is acquired by CCC) accruing through the loan maturity date for the honey. Such charges shall include charges incident to weight and grade determinations on identity-preserved honey. CCC will not assume warehouse storage charges accruing through the loan maturity date for loans on honey acquired by CCC.

§ 1434.12 [Reserved]

§ 1434.13 Liens.

If there are any liens or encumbrances on the honey, waivers that fully protect the interest of CCC must be obtained even though the liens or encumbrances are satisfied from the loan proceeds. No additional liens or encumbrances shall be placed on the honey after the loan is approved.

[54 FR 11500, Mar. 21, 1989, and 54 FR 25445, June 15, 1989]

§ 1434.14 Fees, charges and interest.

(a) *Loan Service Fee.* A producer shall pay a nonrefundable loan service fee to CCC at a rate determined by CCC.

(b) Interest which accrues with respect to a loan shall be determined in accordance with Part 1405 of this chapter. Except with respect to called loans, loans which have not been repaid by the maturity date shall accrue interest in accordance with Part 1403 of this chapter beginning the day after the maturity date of the loan. With respect to called loans, interest shall accrue in accordance with

Part 1403 of this chapter beginning on the required settlement date.

(c) *Delivery charge.* A delivery charge of 1 cent per hundredweight, in addition to the service charge, shall be paid by producers on the quantity of honey delivered to CCC. Such delivery charge shall be paid at time of settlement.

(d) Interest shall not be assessed on a price support loan for honey which has been repaid at a level which is less than the loan level determined in accordance with § 1434.25(d)(1)(ii).

[54 FR 25445, June 15, 1989]

§ 1434.15 Setoffs.

(a) *Farm storage facilities and drying equipment loans.* If the provisions of a note evidencing any loan made to a producer by CCC with respect to farm storage facilities and drying equipment permit any installments of such loan to be satisfied out of the amounts otherwise due a producer under the program, the amounts shall be applied to such installments after deduction of applicable fees and charges and amounts due prior lienholders.

(b) *Producers listed on claims control record.* If a producer is indebted to CCC or to any other agency of the United States and such indebtedness is listed on the ASCS county claims control record, any amounts otherwise due the producer under the program provided in this subpart shall be applied to such indebtedness in accordance with the regulations at 7 CFR Part 13 after deduction of any amounts which may be payable on loan installments for farm storage facilities or drying equipment and other amounts as provided in paragraph (a) of this section.

(c) *Producer's right.* Compliance with the provisions of this section shall not deprive the producer of any right the producer might otherwise have to contest the indebtedness involved in the setoff action either by administrative appeal or by legal action.

§ 1434.16 Determination of quantity.

(a) *For loan purposes.* The estimated quantity of farm-stored honey and the quantity of warehouse-stored honey placed under loan shall be determined as provided in §§ 1434.23 and 1434.24. Estimates of the quantity of farm-stored honey shall be made on the basis of 12 pounds for each gallon of rated capacity of the container.

(b) *At time of acquisition*—(1) *Farm storage.* The quantity of honey acquired by CCC as the result of a loan forfeiture or pursuant to a purchase agreement shall be determined by weighing the honey delivered under the direction of the State committee. The quantity of honey acquired in 5-gallon cans shall be determined by using a tare weight of 2.5 pounds for each can. The quantity of honey acquired in 55-gallon drums shall be determined by using a tare weight of 53 pounds for each drum unless the producer can provide evidence of a lesser tare weight. However, the tare weight of the drum shall not be less than 42 pounds. Title to the containers shall vest in CCC.

(2) *Warehouse storage.* In the case of honey packaged in eligible containers, the quantity of honey acquired by CCC in approved warehouse storage as the result of a loan forfeiture or pursuant to a purchase agreement shall be the net weight shown on the warehouse receipt or the weight determined by a representative of CCC. Title to the containers shall vest in CCC.

[47 FR 35170, Aug. 13, 1982, as amended at 48 FR 15121, Apr. 7, 1983]

§ 1434.17 Determination of quality.

(a) *Quality for loan*—(1) *Farm storage.* Loans on farm-stored honey will be made on the basis of the floral source, color, and class (table or nontable) of the honey as declared and certified by the producer on the Farm Storage Worksheet at the time the honey is placed under loan.

(2) *Warehouse storage.* Loans on warehouse-stored honey will be made on the basis of the class, floral source, grade, and color of the honey as shown on the warehouse receipt or on the extracted honey inspection and weight certificate accompanying the warehouse receipt representing such honey.

(b) *Quality for settlement*—(1) *Farm storage in eligible containers.* When honey is delivered to CCC in eligible containers from farm storage, its quality and color shall be determined by the Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service (AMS), in accordance with the ASCS Specifications for Unprocessed Honey on the basis of samples drawn by ASCS representatives supervising delivery. Samples shall not be drawn until the producer has designated all lots. Single containers shall not be considered as lots unless necessitated by color or floral source. The cost of quality and color determinations for a maximum of four lots shall be for the account of CCC.

(2) *Identity-preserved warehouse-stored.* When honey stored identity-preserved in containers in an approval warehouse is delivered to CCC, its quality and color shall be determined by the Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service (AMS), in accordance with the ASCS Specifications for Unprocessed honey on the basis of samples drawn by ASCS representatives supervising delivery. The cost of such determination shall be for the account of CCC.

(c) *Segregation by color.* Table honey in eligible containers shall, insofar as is practicable, be segregated into lots by color to conform with the color categories which are set forth in the ASCS Specifications for Unprocessed Honey.

(d) *Segregation by classes.* If the honey in eligible containers is not segregated so that it can be classified as table honey, the rate for settlement under a loan or purchase shall be based on the support rate for nontable honey.

(e) *Blends.* In the case of blends of table and nontable honeys, the rate for settlement under a loan or purchase shall be based on the support rate for nontable honey.

[47 FR 35170, Aug. 13, 1982, as amended at 48 FR 34416, July 29, 1983; Amdt. 3, 50 FR 4636, Feb. 1, 1985]

§ 1434.18 [Reserved]

§ 1434.19 Transfer of producer's interest prohibited.

(a) *Warehouse storage loans.* The producer shall not transfer either the remaining interest in or the right to redeem honey pledged as security for a warehouse storage loan nor shall anyone acquire such interest or right. The producer's interest or right of redemption will not be deemed to have been transferred in violation of this paragraph if, under § 1434.25(c), the producer or the producer's properly authorized agent has filed a statement with the county office authorizing the release of such warehouse receipts to others and the loan is repaid within 15 days following the date of such authorization.

(b) *Farm storage loans.* The producer shall not transfer either the remaining interest in or right to redeem honey mortgaged as security for a farm storage loan nor shall anyone acquire such interest or right. Subject to the provisions of § 1434.25, a producer who wishes to liquidate all or part of a loan by contracting for the sale of the honey must obtain written approval of the county office on a form prescribed by CCC to remove a specified quantity of the honey from storage. Any such approval shall be subject to the terms and conditions set forth in the applicable form, copies of which may be obtained by producers or prospective purchasers at the county office.

§ 1434.20 Insurance.

CCC will not require the producer to insure the honey placed under a farm-stored loan. However, if the producer insures such honey and an indemnity is paid thereon, such indemnity shall inure to the benefit of CCC to the extent of its interest after first satisfying the producer's equity in the honey involved in the loss.

§ 1434.21 Loss or damage.

The producer is responsible for any loss in quantity or quality of the honey placed under a farm storage loan or identity-preserved warehouse storage loan. Notwithstanding the foregoing, any such loss occurring and reported to the county office after disbursement of the loan funds and before redemption or delivery to CCC will be assumed by CCC. Losses will be assumed to the extent of the settlement value at the time of destruction of the quantity of honey destroyed up to a quantity not in excess of the quantity required to secure the outstanding loan. If the honey is not destroyed, CCC will only assume an amount equivalent to the extent of the loss or damage as determined by CCC, less any insurance proceeds to which CCC may be entitled and the salvage value of the honey if the producer establishes to the satisfaction of CCC each of the following conditions:

(a) The physical loss or damage occurred without fault or negligence on the part of the producer or any other person having control of the storage structure;

(b) The physical loss or damage resulting solely from an external cause such as fire which is not the result of improper storage of the commodity; windstorm; or flood. CCC will not assume any loss or damage resulting from insect infestation, rodents, vermin, spontaneous combustion, execessive heat, or theft;

(c) The producer has given the county office immediate notice of such loss of damage before redemption or delivery to CCC; and

(d) The producer has made no fraudulent representation in the loan documents or in obtaining the loan. No physical loss or damage occurring before the date of disbursement of the loan funds to the producer will be assumed by CCC.

[47 FR 35170, Aug. 13, 1982, as amended at 54 FR 41589, Oct. 11, 1989]

§ 1434.22 Personal liability of the producer.

(a) *Fraud relating to farm storage and warehouse storage loans and unlawful dispositions.* The making of any fraudulent representation by a producer in the loan documents, in obtaining a loan, or in connection with settlement or delivery under a loan, or the unlawful disposition of any portion of the honey by the producer, shall render the producer subject to criminal prosecution under Federal law. Any such loans shall become payable upon demand and, aside from any additional liability under Federal criminal and civil fraud statutes, the producer shall be personally liable for the amount of the loan, any additional amount paid to the producer in connection with the honey, and all costs which CCC would not have incurred had it not been for the producer's fraudulent representation or unlawful disposition, together with interest on any such amounts. Notwithstanding the provisions of section 6(b) of the Farm Storage Note and Security Agreement (Form CCC-677) and section 6(b) of the Warehouse Storage Note and Security Agreement (Form CCC-678), if a producer has made any such fraudulent representation with respect to or unlawful disposition of the honey pledged as collateral for a price support loan, the amount with which the producer will be credited for any honey delivered to or removed by CCC will be the following:

(1) In the case of farm storage loans, the market value of the honey as determined by CCC as of the date of delivery to or removal by CCC, or the loan settlement value, whichever is the lower;

(2) In the case of warehouse storage loans, the market value of the honey at the close of the market on the final date for repayment or the loan settlement value, whichever is the lower; or

(3) If the honey is sold by CCC in order to determine its market value, the sales price, less any costs sustained by CCC, or the loan settlement value, whichever is the lower.

If the unlawful disposition of the loan collateral is determined by CCC not to have been a willful conversion, the value of the honey or part thereof delivered to CCC or removed by CCC shall be the same as the settlement value for eligible honey acquired by CCC as provided in this subpart.

(b) *Fraud relating to purchases.* If the producer has made a fraudulent representation in a price support purchase by CCC or in the purchase documents, the producer shall be personally liable, aside from any additional liability under Federal criminal or civil fraud statutes, for any loss which CCC sustains with respect to the honey which has been delivered under the purchase agreement. For the purpose of this program, such loss shall be deemed to be the amount paid to the producer for the honey delivered to CCC under the purchase agreement, as well as all costs which CCC would not have incurred had it not been for the producer's fraudulent representation, together with interest on such amounts, less the lowest of the following:

(1) The market value, as determined by CCC, of the honey as of the close of the market on the date of delivery;

(2) The sales price if the honey is sold in order to determine its market value; or

(3) The purchase settlement value.

(c) *Overdisbursement.* If the amount disbursed under a loan or purchase agreement or in settlement thereof exceeds the amount authorized under these regulations or the amount determined from the support rate for the applicable crop year, the producer shall be personally liable for repayment of the amount of such excess.

(d) *Poisonous substances and contamination.* A producer shall be personally liable for any damages resulting from delivering to CCC honey containing mercurial compounds or other substances poisonous to humans, animals, or food commodities which are contaminated.

(e) *Undercollection.* If the amount collected from the producer in satisfaction of the loan is less than the amount required to be remitted to CCC in accordance with the provisions of this part, the producer shall be personally liable for repayment of the amount of such deficiency.

(f) *Joint loans.* In the case of joint loans, each producer signing the note shall be jointly and severally liable for any personal liability which may result due to the application of the provisions of this section.

§ 1434.23 Quantity for warehouse storage loan.

The amount of a loan on the quantity of eligible honey packaged in eligible containers and stored identity-preserved in an approved warehouse shall be based on a percentage of the net weight specified on the warehouse receipt representing such honey which is pledged as security for the loan. Such percentage shall not exceed 95 percent of the weight so specified.

§ 1434.24 Quantity for farm storage loans.

(a) *Maximum loan amount.* Farm storage loans shall not be made on more than a percentage (hereinafter called the "loan percentage"), as established by the State committee, of the certified or measured quantity of the eligible honey stored in approved farm storage and covered by the note and security agreement. The maximum loan percentage shall not exceed 90 percent of the measured or certified quantity. The State committee shall establish the loan percentage each year on a Statewide basis or for specified areas within the State. Before the establishment of a loan percentage, the State committee shall consider conditions in the State or areas within a State to determine if the loan percentage should be below the maximum loan percentage in order to provide CCC with adequate protection. Loan percentages previously determined shall be lowered if warranted by changed conditions in the State or areas within a State, but new loan percentages shall apply only to new loans and not to outstanding loans. In determining the loan percentages the State committee shall consider general honey-producing conditions, factors affecting quality peculiar to an area within the State, and climatic conditions affecting storability. The loan percentages established by the State committee may be lowered by the county committee on an individual basis when determined to be necessary in order to provide CCC with adequate protection. The county committee shall consider:

(1) The condition or suitability of the storage structure;

(2) The condition of the honey;

(3) The hazardous location of the storage structure, such as a location which exposes the structure to danger of flood, fire, and theft by a person not entrusted with possession of the honey;

(4) Any disagreement with respect to the quantity of honey to be placed under loan; and

(5) Such other factors which relate to the preservation or safety of the loan collateral.

(b) *Less than maximum loan amount.* Farm storage loans may be made on less than the maximum quantity eligible for loan at the producer's request. If the loan quantity is reduced by the State committee, the county committee, or by request of the producer, the mortgage shall cover all of the honey in the lot on which the loan is made. When the loan percentage is lowered for one or more of the hazards listed in paragraph (a) of this section, the producer shall be notified in writing that CCC will not assume any loss or damage to the loan collateral resulting from the particular hazards to which the structure was exposed.

(c) *Transfer from farm storage loans to warehouse storage loans.* Upon request by the producer, the county committee may approve the transfer of honey or part thereof which is under a farm storage loan to a warehouse storage loan at any time during the loan period. Liquidation of the farm storage loan or part thereof shall be made through the pledge of warehouse receipts for the honey placed under warehouse storage loan and the immediate payment by the producer of the amount by which the warehouse storage loan is less than the farm storage loan or part thereof plus interest. Any amounts due the producer shall be disbursed by the county office. The maturity date of the warehouse storage loan shall be the maturity date applicable to the farm storage loan which was transferred to such warehouse storage loan.

(d) *Packaged in eligible containers.* Loans shall be made on not more than 90 percent of the estimated quantity of eligible honey packaged in eligible containers in approved farm storage.

(e) *Producer certification.* In addition to loan quantity determinations based on measurement as provided in paragraph (a) of this section, determinations may be made on the basis of the quantity of honey which an eligible producer certifies in writing on Form CCC-666 is eligible if the honey is in approved farm storage and available for loan purposes.

(f) *Incorrect producer certification.* (1) If the county committee determines by measurement or otherwise that the actual quantity serving as collateral for a loan based on certification by the producer is less than the loan quantity, the county committee shall call the loan. The producer shall have ten days to settle the loan, except that the producer may request reconsideration of the loan call and provide information regarding the circumstances leading to the incorrect certification. The county committee may reinstate the producer's loan if:

(i) The circumstances are of a highly meritorious nature;

(ii) The producer acted in good faith;

(iii) The producer did not knowingly provide an incorrect certification and made a reasonable attempt to determine the quantity; and

(iv) The producer repays the amount of any overdisbursement.

If the loan is called, the county committee may refuse to approve any further farm-stored loans for honey produced by the producer through the end of the next crop year after the crop year in which the incorrect certification was made.

(2) If the producer has incorrectly certified such quantities on more than one occasion, the county committee shall call the loan(s) involved and approve no further farm-stored loans for the producer on any commodity through the end of the next crop year after the crop year in which the incorrect certification was made. If the county committee feels the seriousness of the matter so justifies, they may deny further farm-stored loans to the producer for more than one year.

(g) *Unauthorized removal.* If there has been unauthorized removal of any part of farm-stored collateral, the county committee shall, on the first offense, call the loan involved. The producer shall have ten days to settle the loan, except that the producer may request reconsideration of the call and provide information regarding the circumstances leading to the unauthorized removal. The county committee may reinstate the producer's loan if:

(1) The circumstances leading to the unauthorized removal are of a highly meritorious nature;

(2) The producer acted in good faith;

(3) The producer did not knowingly remove the honey under loan; and

(4) The producer repays the loan with respect to the quantity of the collateral which had been removed.

If the loan is called, the county committee may refuse to approve any further farm-stored loans for honey produced by the producer through the end of the next crop year after the crop year in which the unauthorized removal occurred. If the unauthorized removal is the second offense, the county committee shall call the loan involved and not approve any further farm-stored loans for the producer on any commodity through the end of the next crop year after the crop year in which the unauthorized removal occurred.

§ 1434.25 Release of the honey under loan.

(a) *Obtaining release—farm storage.* A producer shall not remove any loan honey from farm storage until prior written approval for such removal has been received from the county committee on one of the applicable forms listed in § 1434.12. A producer may at any time obtain a release of all or part of the honey remaining under loan by paying to CCC (1) the amount of the loan which had been made by CCC to the producer with respect to the quantity of the honey released, plus interest, or (2) an amount, without interest, which is less than the loan level determined in accordance with § 1434.25(d)(1)(ii). When the proceeds of a sale of honey are needed to repay all or part of the loan, see § 1434.19(b).

(b) *Release of farm storage note and security agreement.* The note and security agreement shall not be released by CCC until the loan has been satisfied in full, by payment of (1) the amount of the loan, plus interest, or (2) an amount, without interest, which is less than the loan level determined in accordance with § 1434.25(d)(1)(ii). After satisfaction of a loan, the county executive director shall release CCC's security interest in the honey.

(c) *Obtaining release—warehouse storage loans.* The producer may arrange with the county office for release of all or part of the honey under warehouse storage loan on or prior to maturity date of such loan by repayment of (1) the amount of the loan with respect to the quantity of the honey to be released plus interest, or (2) an amount, without interest, which is less than the loan level determined in accordance with § 1434.25(d)(1)(ii). Each partial release must cover all of the honey represented by one warehouse receipt. Subject to provisions of § 1434.5(c), warehouse receipts redeemed by the producer upon repayment of the loan, as provided in this paragraph (c), shall be released only to the producer or the producer's authorized agent. However, redeemed warehouse receipts may be released to persons designated in a written authorization filed with the county office by the producer or the producer's properly authorized agent and dated within 15 days prior to the date of repayment.

(d) *Repayment of loan at level less than loan level.* (1) Producers of honey may repay honey price support loans at the level that is the lesser of:

(i) The loan level determined for such crop; or

(ii) Such level as the Secretary, or a designee, determines will (A) minimize the number of loan forfeitures; (B) will not result in excessive total stocks of honey; (C) reduce the costs incurred by the Federal Government in storing honey; and (D) maintain the competiveness of honey in domestic and export markets.

(2) The Secretary, or a designee, shall determine and publicly announce the repayment levels for each color and class of honey on a weekly basis.

[47 FR 35170, Aug. 13, 1982, as amended at 51 FR 25854, July 17, 1986; 52 FR 11619, Apr. 10, 1987]

§ 1434.26 Liquidation of farm storage loans.

(a) *General.* In the case of farm storage loans, the producer is required to (1) pay off the loan by repayment of the amount of loan, plus interest, or an amount, without interest, which is less than the loan level determined in accordance with § 1434.25(d)(1)(ii), or (ii) deliver the honey under loan to CCC. Deliveries shall be made in accordance with written instructions issued by the county office which shall set forth the time and place of delivery. CCC will not accept delivery of any quantity of eligible honey in excess of the larger of (1) 110 percent of the measured or certified quantity, or (2) a sufficient quantity of honey having a settlement value equal to 110 percent of the loan value being settled. Settlement of the quantity determined shall be made as provided in § 1434.29. Delivery points shall be limited to those approved by the ASCS Kansas City Commodity Office.

(b) *Notice to county committee.* If the producer desires to deliver the honey to CCC, the producer must give the county committee notice in writing of intention to do so within a reasonable time prior to the applicable maturity date.

(c) *Honey going out of condition.* If, prior to delivery to CCC, the honey in approved farm storage is going out of condition, the producer shall so notify the county office and confirm such notice in writing. If the county committee determines that:

(1) The honey is going out of condition or is in danger of going out of condition;

(2) The honey cannot be satisfactorily conditioned by the producer; and

(3) Delivery cannot be accepted within a reasonable length of time, the county committee shall arrange for an inspection and grade and quality determination.

When delivery is completed, settlement shall be made subject to the provisions of §§ 1434.21 and 1434.22 on the basis of such grade and quality determination or on the basis of the grade and quality determination made at the time of delivery, whichever is higher, for the quantity actually delivered.

(d) *Delivery before maturity date.* When considered necessary to protect the interest of CCC or when requested by the producer, the county committee may call the loan and accept delivery of the honey prior to the loan maturity date.

(e) *Storage deduction for early delivery.* If the loan maturity date is accelerated upon request of the producer and the acceleration is approved by CCC, the settlement value of the honey shall be reduced by one-sixty of 1 cent per pound per month or fraction thereof from the earlier of (1) the date delivery is accomplished or (2) the final date for delivery as shown in the delivery instructions up to and including the original loan maturity date.

[47 FR 35170, Aug. 13, 1982, as amended at 51 FR 25854, July 17, 1986; 52 FR 11619, Apr. 10, 1987]

§ 1434.27 Liquidation of warehouse storage loans.

If a producer does not repay (1) the loan indebtedness upon maturity of the loan or (2) an amount, without interest, which is less than the loan level determined in accordance with § 1434.25(d)(1)(ii), CCC shall have the right to sell or acquire title to the honey pledged as security for the loan indebtedness.

[47 FR 35170, Aug. 13, 1982, as amended at 51 FR 25854, July 17, 1986; 52 FR 11619, Apr. 10, 1987]

§ 1434.28 [Reserved]

§ 1434.29 Settlement.

(a) *General.* Except as provided in §§ 1434.21, 1434.22, and paragraph (b) of this section, settlement with the producer for eligible honey acquired by CCC under loan or purchase will be made on the basis of the quantity, floral source, class, quality, grade, and color of such honey as provided in this section and other applicable provisions of this subpart. The settlement value of honey shall be the product of the support rate for the class, floral source, grade, and color, times the quantity acquired at the time of settlement adjusted by the applicable discounts. The support rate per pound of honey at which settlement will be made shall be the rate determined annually and available in ASCS County offices.

(b) *Warehouse storage—Identity preserved.* Settlement for eligible honey stored identity preserved in an approved warehouse and acquired by CCC shall be made on the basis of the net weight shown on the extracted honey inspection and weight certificate and the class, floral source, color, and grade shown on the inspection certificate.

(c) *Ineligible honey inadvertently accepted by CCC.* If ineligible honey is inadvertently accepted by CCC, the settlement value shall be the market value as of the date of delivery as determined by CCC. The provisions of § 1434.22 shall be applicable to settlement on ineligible honey where there has been a fraudulent representation on the part of the producer.

(d) *Payment of deficiency by producers.* If the settlement value of the honey is less than the amount due on the loan (excluding interest), the amount of any deficiency plus interest thereon shall be paid to CCC. If the deficiency is not promptly paid, CCC may, in addition to any of its other rights, satisfy the amount of such deficiency plus interest out of any payment which would otherwise be due the producer under any agricultural program administered by the Secretary of Agriculture or any other payments which are due or may become due the producer from CCC or any other agency of the United States.

(e) *Payments of amount due producer.* If the settlement value of the honey delivered to CCC exceeds the amount due on the loan (excluding interest), such excess amount shall be paid to the producer. Any payment due the producer on either a loan or purchase will be made by draft drawn on the account of CCC by the county office.

(f) *Storage where CCC is unable to take delivery.* A producer may be required to retain and store the honey that is serving as collateral for a loan or subject to a purchase agreement for a period of 60 days after the maturity date of a loan or expiration date of a purchase agreement without any cost to CCC. If CCC is unable to take delivery of the honey within the 60-day period after the loan maturity date, the producer shall be paid a storage payment upon delivery of the honey to CCC. The period for earning such storage payment shall begin the day following the expiration of the 60-day period after such maturity date and extend through the earlier of: (1) The final date of actual delivery or (2) the final date for delivery as specified in the delivery instructions issued to the producer by the county office. The storage payment shall be computed at the storage rate stated in the applicable CCC storage agreement for honey in effect at the delivery point where the producer delivers the honey.

§ 1434.30 Foreclosure.

(a) *Removal from storage.* If the loan indebtedness (i.e., the unpaid amount of the note, interest, and charges) is not satisfied upon maturity of the note, CCC may remove the honey from storage and assign, transfer, and deliver the honey or documents evidencing title thereto at such time, in such manner, and upon such terms as CCC may determine at public or private sale. Any such disposition may similarly be accomplished without the prior removal of the honey from storage. The honey may be processed before sale. CCC may become the purchaser of the whole or any part of the honey hereunder at either a public or private sale.

(b) *When CCC takes title to honey.* At CCC's election, title to all or any part of the unredeemed honey securing the note as CCC may designate shall, without a sale thereof, immediately vest in CCC upon maturity and nonpayment of the producer's note. Whenever CCC acquires title to the unredeemed honey, CCC shall have no obligation to pay for any market value which such honey may have in excess of the loan indebtedness, i.e., the unpaid amount of the note plus interest and charges.

(c) *Payment to producer.* Nothing herein shall preclude CCC from paying the producer or the producer's personal representative or heirs who meet the conditions set forth in § 1434.4 with respect to the following:

(1) Any amount by which the settlement value of the collateral honey ex-

ceeds the principal amount of the loan; or

(2) The amount by which the proceeds of sale exceed the loan indebtedness including interest and charges if the collateral honey is sold to third persons as provided in paragraph (a) of this section instead of full title to such collateral honey being acquired by CCC as provided in paragraph (b) of this section.

(d) *Honey sold at less than amount due on loan.* If honey is removed from storage by CCC and is sold pursuant to paragraph (a) of this section at less than the principal amount due CCC on the loan (excluding interest), the producer shall be liable to CCC for the difference between the settlement value of the honey (or the proceeds from the sale of the honey, if higher) and the amount of the loan plus interest. The amount of any deficiency may be set off against any payment which would otherwise be due the producer under any agricultural program administered by the Secretary of Agriculture or any other payments which are due or may become due the producer from CCC or any other agency of the United States.

§ 1434.31 Charges not to be assumed by CCC.

CCC will not assume any charges for insurance, storage, packaging, or processing.

§ 1434.32 Handling payments and collections not exceeding $ 9.99.

In order to avoid administrative costs of making small payments and handling small accounts, amounts of $ 9.99 or less which are due the producer will be paid only upon the producer's request. Deficiencies of $ 9.99 or less, including interest, may be disregarded unless demand for payment is made by CCC.

[47 FR 35170, Aug. 13, 1982, as amended at 49 FR 50168, Dec. 27, 1984]

§ 1434.33 Death, incompetency, or disappearance.

In the case of death, incompetency, or disappearance of any producer who is entitled to the payment of any sum in settlement of a loan or a purchase, payment shall be made upon proper application to the county office which made the loan or purchase to the persons who would be entitled to such producer's payment under the regulations contained in Part 707 of this title—Payments Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent.

§ 1434.34 Definitions.

As used in the regulations in this subpart and in all instructions, forms, and documents in connection therewith, the words and phrases listed in this section shall have the meaning assigned to them herein unless the context or subject matter otherwise requires.

(a) *General.* The following words or phrases: "Person," "State committee," "State Executive Director," "county committee," "county executive director," and "farm," respectively, shall each have the same meaning as the definitions of such term in the Regulations Governing Reconstitution of Farms, Allotments, and Bases, Part 719 of this title and any amendment thereto.

(b) *Settlement value.* The term "settlement value" means the value at which settlement is made with the producer on the mortgaged or pledged honey offered for purchase, as determined under the provisions of the regulations in this part.

(c) *Charges.* The term "charges" means all fees, costs, and expenses incident to insuring, carrying, handling, storing, conditioning, and marketing the honey and otherwise protecting the interest in the loan collateral of CCC or the producer including foreclosure costs.

(d) *County committee.* The term "county committee" means only the committee and not its representative.

(e) *Representative of the county committee and county committee representative.* The terms "representative of the county committee" and "county committee representative" mean a member of the county committee, the county executive director, or a person designated by the county executive director to act in behalf of the county executive director.

(f) *Request for price support.* The term "request for price support" means a request for loan or execution of Purchase Agreement (Form CCC-614) as applicable.

(g) *Chattel mortgage.* The term "chattel mortgage" means any security instrument which secures a farm storage loan.

[47 FR 35170, Aug. 13, 1982, as amended at 52 FR 11619, Apr. 10, 1987; 52 FR 48082, Dec. 18, 1987]

§ 1434.35 Kansas City ASCS Commodity Office and ASCS Management Field Office.

(a) Kansas City ASCS Commodity Office, P.O. Box 205, Kansas City, Missouri 64141, will serve all States.

(b) Accounting, recording, and reporting for all States will be handled through ASCS Management Field Office, P.O. Box 205, Kansas City, Missouri 64141.

§ 1434.36 Paperwork Reduction Act assigned numbers.

The Office of Management and Budget has approved the information collection requirements contained in these regulations in accordance with 44 U.S.C. Chapter 35 and OMB numbers 0560-0040 and 0560-0087 have been assigned.

[49 FR 24879, June 18, 1984]

PART 1435—SUGAR

Subpart—Regulations Governing the Protection of Sugar Producers

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AUTHORITY: 7 U.S.C. 1421 and 1446; 15 U.S.C. 714b and 714c.

Subpart—Regulations Governing the Protection of Sugar Producers

AUTHORITY: Sec. 401(e)(2), Agricultural Act of 1949 (7 U.S.C. 1421(e)(2)); 5 U.S.C. 301.

SOURCE: 51 FR 16287, May 2, 1986, unless otherwise noted.

§ 1435.200 General statement.

If the bankruptcy or other insolvency of a processor has caused producers of sugar beets or sugarcane not to receive maximum benefits from the price support program for sugar beets or sugarcane within 30 days after the final settlement date provided for in the contract between such producers and processor, CCC, on demand of the producers and on such assurances as to nonpayment as CCC may require, shall pay such producers benefit payments.

§ 1435.201 Definitions.

The following definitions apply to terms used in this subpart:

"ASCS" means the Agricultural Stabilization and Conservation Service, United States Department of Agriculture.

"Benefit payment(s)" means an amount to be paid to eligible producers equal to the difference between the specified price support level for the applicable crop of sugar beets or sugarcane, after all applicable adjustments, and any benefits previously received by the producers with respect to such crop of sugar beets and sugarcane.

"CCC" means the Commodity Credit Corporation, United States Department of Agriculture.

§ 1435.202 Producer eligibility.

(a) A producer of sugar beets or sugarcane shall be considered to be eligible for benefit payments only:

(1) For that quantity of domestically-produced sugar beets or sugarcane sold under contract to a processor who was a participant in the price support program for sugarcane or sugar beets for the applicable crop;

(2) If the contract with the processor provided for a final settlement date after January 1, 1985;

(3) If the processor failed to make payment within 30 days after the final settlement date due to bankruptcy or other insolvency; and

(4) If the producer was an eligible producer for purposes of the price support program for the applicable crop of sugar beets or sugarcane.

(b) CCC may require as a condition of payment such documentation or other proof of the producer's eligibility, the processor's nonpayment, or other element of the benefit payment as CCC determines appropriate.

§ 1435.203 Benefit payment to producers.

(a) *Where to request benefit payments.* A producer must request a benefit payment from CCC at the producer's local county ASCS office, unless otherwise determined by CCC, in a manner and on a form prescribed by CCC.

(b) *When to request benefit payments.* A producer must request a benefit payment no earlier than 30 days, and no later than 60 days, after the final settlement date provided for in the contract between the producer and the processor, unless otherwise approved by CCC. In the case of eligible producers of 1984-crop sugar beets, the final date for producers to demand a benefit payment shall be 30 days following the effective date of this regulation, unless otherwise approved by CCC.

(c) *Method of payment.* Benefit payments will be made by checks drawn on CCC, by credit to the producer's account, or by such other means as CCC determines appropriate.

§ 1435.204 Liens.

(a) In order to receive a benefit payment, a producer must certify to CCC whether there were any liens or encumbrances on the sugar beets or sugarcane that the producer sold to the applicable processor under the applicable contract as of the time of delivery of the sugar beets or sugarcane to the processor, or as of the time title to the sugar beets or sugarcane transferred from the producer to the processor if title transferred at a time other than at the time of delivery to the processor. If there were any such liens or encumbrances, the producer must provide CCC with a certified list of all such liens or encumbrances together with the names and addresses of the holders of such liens or encumbrances and the amount held by each such holder.

(b) CCC will make all benefit payments jointly to the producer and the holders of such liens or encumbrances unless the producer provides CCC with a waiver of all such liens or encumbrances by each such holder or a certified statement by such holder that the liens or encumbrances have been extinguished. CCC may prescribe the form for such waivers or statements.

§ 1435.205 Subrogation of claims.

(a) A producer must execute an agreement with CCC, acceptable to CCC, subrogating to CCC all claims of that producer against the processor and other persons responsible for nonpayment. The amount subrogated to CCC must be equal to the amount of the producer's claims, up to the amount of the benefit payment plus any applicable interest or other charges. Any recoveries up to the amount subrogated which are received by that producer from any source whatsoever for the processor's nonpayment must be immediately forwarded to CCC. The producer shall cooperate with CCC in CCC's efforts to collect on the claims subrogated to CCC.

(b) A producer shall maintain the books and records pertaining to the benefit payments and the applicable contracts with the processor for a period of at least 3 years following the producer's demand for payment under this subpart. Authorized officials of the United States Department of Agriculture shall have access to, and right to examine, any pertinent books, documents, papers, and records of the producer.

§ 1435.206 OMB control number assigned pursuant to Paperwork Reduction Act.

The information collection requirements contained in these regulations (7 CFR 1435.200 through 1435.206) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0560-0095.

Subpart—Price Support Loan Program for the 1986 Through 1990 Crops of Sugar Beets and Sugarcane

AUTHORITY: Sec. 201(j), Pub. L. 81-439 (7 U.S.C. 1446(j)) as amended by Sec. 901, Pub. L. 99-198, 99 Stat. 1443; Sec. 401(e), Pub. L. 81-439 (7 U.S.C. 1421(e)) as amended by Sec. 903, Pub. L. 99-198, 99 Stat. 1444; Secs. 4 and 5, Pub. L. 80-89, 62 Stat. 1070, as amended (15 U.S.C. 714b and 714c).

SOURCE: 51 FR 39509, Oct. 29, 1986, and 54 FR 41043, Oct. 5, 1989, unless otherwise noted.

§ 1435.300 Applicability.

(a) The regulations of this subpart are applicable to the 1989 and subsequent crops of sugar beets and sugarcane. These regulations set forth the terms and conditions under which price support loans shall be entered into by the Commodity Credit Corporation ("CCC") with eligible processors. Additional terms and conditions are set forth in the loan application and note and security agreement which must be executed by a processor in order to receive such a loan. The collateral for such a loan must be eligible sugar which is stored in eligible storage. Only eligible sugar which is in eligible storage shall be accepted for delivery by CCC in settlement of the loan.

(b) Price support loan rates and the forms which are used in administering the price support program for a crop of sugar beets or sugarcane are available in State and county Agricultural Stabilization and Conservation Service ("ASCS") offices ("State and county offices", respectively).

[54 FR 41589, Oct. 11, 1989]

§ 1435.301 Administration.

(a) The price support program which is applicable to a crop of sugar beets or sugarcane shall be administered under the general supervision of the Administrator, ASCS, and shall be carried out in the field by State and county Agricultural Stabilization and Conservation committees ("State and county committees", respectively).

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this part.

(c) The State committee shall take any action required by these regulations which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, an action taken by such county committee which is not in accordance with the regulations of this part; or

(2) Require a county committee to withhold taking any action which is not in accordance with the regulations of this part.

(d) No provision or delegation herein to a State or county committee shall preclude the Administrator, ASCS, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator, State and County Operations, ASCS, may authorize State and county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not affect adversely the operation of the price support program.

(f) A representative of CCC may execute price support loans and related documents only under the terms and conditions determined and announced by CCC. Any such document which is not executed in accordance with such terms and conditions, including any purported execution prior to the date authorized by CCC, shall be null and void.

[54 FR 41589, Oct. 11, 1989]

§ 1435.302 Definitions.

(a) "Eligible producer" means the owner of a portion or all of the sugar beets or sugarcane, including share rent landowners, at both the time of harvest and the time of delivery to the processor, except producers determined to be ineligible as a result of the regulations governing highly erodible land and wetland conservation found at 7 CFR Part 12 or the regulations governing controlled substances violations at 7 CFR Part 796.

(b) "Eligible Storage" means a storage facility meeting the requirements set forth in § 1435.308(d) of this subpart.

(c) "Normal juice" means the undiluted juice extractable from sugarcane by a mill tandem when no maceration water is added during the milling process.

(d) "Normal juice purity" means a percentage expressing the ratio of the quantity of sucrose to the quantity of dissolved solids in normal juice.

(e) "Normal juice sucrose" means the percentage of sucrose in normal juice.

(f) "Processor" means a person or legal entity that either commercially processes sugar beets into refined sugar or processes sugarcane into raw sugar, cane syrup, or edible molasses or is a cooperatively-owned refiner of raw cane sugar which markets refined cane sugar and raw cane sugar on behalf of its members and nonmember patrons, except for a person or legal entity who is determined to be ineligible as a result of the regulations governing highly erodible land and wetland conservation found at 7 CFR Part 12 or the regulations governing controlled substances violations at 7 CFR Part 796.

(g) "Raw value" of any quantity of sugar means its equivalent in terms of ordinary commercial raw sugar testing 96 degrees by the polariscope.

(h) "Secretary" means the Secretary of Agriculture or an official who has been designated to act on his behalf.

(i) "Sugar" means refined beet sugar, refined cane sugar, raw cane sugar, sugarcane syrup, or edible molasses which:

(1) Is processed by a processor from domestically-produced sugar beets or sugarcane, and

(2) Meets the quality requirements set forth in § 1435.308(b) of this subpart.

(j) "Sugar beets of average quality" and "Sugarcane of average quality" means sugar beets and sugarcane containing a percentage of sucrose as set forth in notices published in the FEDERAL REGISTER for the applicable crop year.

(k) "Crop year" means the period from July 1 through June 30, inclusive. In referring to the crop year for a particular crop, the crop year begins on July 1 of the year of that crop. For example, the crop year for the 1986 crop begins on July 1, 1986 and is referred to as the "1986 crop year". "1986 crop" means sugar processed from domestically-produced sugar beets or sugarcane during the 1986 crop year. 1987 through 1990 crops means sugar processed from domestically-produced sugar beets or sugarcane during each of the applicable crop years.

§ 1435.303 Method of support and loan rates.

(a) *Method of support.* Price support to domestic producers of the 1989 through 1990 crops of sugar beets and sugarcane processed during the applicable crop year is available through nonrecourse loans to eligible processors.

(b) *Loan rates.* The basic (weighted average) loan rates for the 1989 through 1990 crops of sugar beets and sugarcane will be set forth in notices published in the FEDERAL REGISTER for the applicable crop year. The rates will be set forth for refined beet sugar and for cane sugar, raw value, including the cane sugar, raw value, contained in refined cane sugar, sugarcane syrup, and edible molasses. In the case of refined or specialty sugar made from raw cane sugar, the rate shall be the appropriate regional rate applied to the quantity of the refined or specialty sugar converted to an equivalent quantity of cane sugar, raw value.

(c) *Location differentials.* The 1989 through 1990 crop loan rates applicable to eligible sugar shall be adjusted to reflect the processing location of the sugar offered as collateral for a price support loan as set forth in Notices published in the FEDERAL REGISTER for the applicable crop year.

[51 FR 39509, Oct. 29, 1986, as amended at 54 FR 41589, Oct. 11, 1989]

§ 1435.304 Eligibility requirements.

(a) The maximum quantity of sugar which is eligible to be pledged as collateral for price support loans by an eligible processor is that quantity of domestically-produced sugar which is equivalent to the quantity of sugar processed by the processor during the applicable crop year from sugar beets and sugarcane grown by eligible producers. Such sugar must be processed and owned by the eligible processor (or jointly owned by the eligible processor and eligible producer) pledging the sugar as collateral for loan and must be in eligible storage. For purposes of this paragraph and § 1435.306 of this subpart, sugar that is processed after June 30 of a particular crop year, but before October 1 of the subsequent crop year, from sugar beets harvested during a continuous harvest which began during the particular crop year, shall be considered as having been processed during that particular crop year.

(b) Eligible processors are those processors who, as a condition of obtaining a CCC price support loan, agree to pay to all eligible producers who have delivered or will deliver to them for processing sugar beets or sugarcane not less than the minimum price support levels specified in notices published in the FEDERAL REGISTER for the applicable crop year.

§ 1435.305 Availability, disbursement, and maturity of loans.

(a) *Availability.* To obtain price support on eligible sugar, an eligible processor: (1) Must file a request for a price support loan, as prescribed by CCC, with the State committee of the State where such processor is headquartered or a county committee designated by the State committee; and (2) must execute a note and security agreement and storage agreement as prescribed by CCC. The request for price support may be filed no earlier than October 1 and must be filed no later than June 30 of the applicable crop year. The request for price support may include a quantity of sugar which the processor estimates will be processed after that crop year but will be considered as having been processed during that crop year in accordance with the provisions of § 1435.304(a) of this subpart. However, no loan proceeds may be disbursed for such sugar until it has actually been processed and is otherwise established as being eligible to be pledged as loan collateral.

(b) *Redeemed loan collateral.* A processor may, within the loan availability period, repledge to CCC as collateral eligible sugar that has previously served as loan collateral for a price support loan that has been repaid. In making application for such loan, the processor shall specify that the loan collateral should be treated as a quantity of eligible sugar that has previously served as loan collateral for a price support loan which has been repaid. The processor shall also designate the original price support loan with respect to which the reoffered loan collateral was originally pledged. The maturity date of the subsequent loan shall be the same as the maturity date of the original loan. Loan collateral repledged that has been previously redeemed from CCC shall not be included in determining the total cumulative quantity of sugar on which loans have been obtained for purposes of §1435.306 of this subpart.

(c) *Disbursement of loans.* Disbursement will be made by means of checks drawn on the account of CCC. Disbursements shall be made without regard to the actual polarity of the sugar pledged as collateral for the price support loan but shall be made on the assumption that the polarity of such sugar is 96 degrees by the polariscope. Adjustments for polarity will be made at the time of the settlement of the loan.

(d) *Maturity of loans.* Except as provided in paragraph (b) of this section or unless CCC and the processor agree otherwise, loans will mature on the last day of the sixth month following the month in which the loan is disbursed, but in no event later than September 30 following disbursement of the loan. Loan maturity dates may be accelerated by CCC in accordance with §1435.307(b)(3) of this subpart. CCC and the processor may agree upon an earlier or later maturity date (but in no event later than September 30 following disbursement of the loan) if such maturity date will not impair the effectiveness of the support program, as determined by CCC.

[51 FR 39509, Oct. 29, 1986, as amended at 54 FR 41589, Oct. 11, 1989]

§ 1435.306 Quantity eligible for loan.

Price support loans shall not be approved for more than the quantity of sugar which an eligible processor certifies is eligible and available to be pledged as collateral for a loan. Sugar pledged as collateral for a loan is not required to be stored identity-preserved. The total cumulative quantity of sugar that may be pledged as collateral for a price support loan may not exceed the maximum quantity of sugar eligible to be pledged as loan collateral as determined in § 1435.304(a) of this subpart. The total quantity of sugar which a processor may pledge as collateral for a loan at any single time may not exceed:

(a) The total eligible storage capacity less ineligible sugar in storage; or

(b) The quantity of eligible sugar processed during the applicable crop year, whichever is less.

§ 1435.307 Loan maintenance and liquidation.

(a) *Maintenance of the commodity under loan.* A processor shall maintain in eligible storage eligible sugar of sufficient quality and quantity to satisfy the processor's loan indebtedness to CCC. By executing a Marketing Authorization for Loan Collateral (Form CCC-681-1), the processor may request and obtain prior written approval of the loanmaking office to remove a specified quantity of the loan collateral for the purpose of delivering it to a buyer prior to repayment of the loan. The loanmaking office shall not approve such a request unless the buyer of the sugar agrees to pay to CCC an amount necessary to satisfy the processor's loan indebtedness with respect to the sugar which has been purchased. Any such approval shall not:

(1) Constitute a release of CCC's security interest in the sugar, or

(2) Relieve the processor of liability for the full amount of the loan indebtedness, including interest.

(b) *Loan Liquidation*—(1) *Redemption of loan collateral.* At the processor's option, a processor may, at any time prior to maturity of the loan, redeem all or any part of the loan collateral by paying to CCC the principal amount of the loan, plus interest, applicable to the quantity of sugar redeemed.

(2) *Forfeiture of loan collateral.* (i) If a processor desires to forfeit all or any part of the loan collateral to CCC, the processor must notify in writing the appropriate loanmaking office of the processor's intent to forfeit the loan collateral and the amount of loan collateral which the processor intends to forfeit. Such notice must be delivered to the loanmaking office no later than 30 days prior to the maturity date of the loan. CCC shall not accept delivery of sugar in settlement of a price support loan in excess of the amount specified in the notice of intent to forfeit.

(ii) Notwithstanding the fact that the processor has given notice of intent to forfeit, the processor may, at any time prior to maturity of the loan, redeem the loan collateral in accordance with paragraph (b)(1) of this section.

(iii) If the processor does not redeem any amount of the loan collateral with respect to which a notice of intent to forfeit has been properly given, the unredeemed loan collateral will, without further action by CCC or the processor, be deemed to have been delivered to CCC in-store at the processor's storage facility on the day following the maturity date of the loan. Upon delivery, title and all rights and interest with respect to the sugar shall immediately vest in CCC. Delivery of eligible sugar in eligible storage will be accepted as payment in full of the principal amount of the loan, plus interest, applicable to the quantity of sugar delivered.

(3) *Acceleration of the loan maturity date.* CCC may at any time accelerate the date for repayment of the loan indebtedness, including interest. CCC will give the processor notice of such acceleration at least 10 days in advance of the accelerated loan maturity date. In the event of any such acceleration, the processor may elect to redeem or forfeit all or any part of the loan collateral in accordance with the provisions of paragraphs (b)(1) and (2) of this section. However, the required notice of intent to forfeit, as set forth in subparagraph (b)(2)(i) of this section, may be given at any time prior to the accelerated maturity date.

(4) *Foreclosure.* If the loan indebtedness, including interest, is not satisfied in accordance with the provisions of this section, CCC may, upon notice, with or without removing the collateral from storage, sell it at either a public or private sale. CCC may become the purchaser. If the net proceeds are less than the amount due on the loan, the processor shall be liable to CCC for the difference.

(5) *Loss or damage of loan collateral.* The processor shall at all times be responsible for maintaining the quality and quantity of the loan collateral in storage. Notwithstanding the foregoing, the processor shall not be liable for any damage, and CCC will bear its pro rata share of any loss, in the case of loan collateral sugar stored on a commingled basis in eligible storage as set forth in § 1435.308(d) of this subpart, less any insurance proceeds and salvage value of the sugar to which CCC may be entitled, if the processor establishes to the satisfaction of CCC that each of the following conditions occurred:

(i) The loss or damage occurred without fault or negligence on the part of the processor;

(ii) The physical loss or damage resulted solely from an external cause such as fire which is not the result of improper storage of the sugar; windstorm; or flood. CCC will not assume any loss of damage resulting from insect infestation, rodents, vermin, spontaneous combustion, excessive heat, or theft;

(iii) The processor gave the loan-making office immediate notice of such loss or damage; and

(iv) The processor made no fraudulent or misleading representation in the loan documents or in obtaining the loan.

(c) *Storage costs.* Storage costs through the loan maturity date shall be borne by the borrower.

(d) *Processor incorrect certification or unauthorized removal.* If CCC determines, by actual measurement or otherwise, that the actual quantity serving as collateral for a price support loan is less than the loan quantity, because of incorrect certification, unauthorized removal, or unauthorized disposition, CCC may call the loan. Such determination shall result in the processor being deemed ineligible for price support through at least the crop year after the crop year in which the incorrect certification, unauthorized removal, or unauthorized disposition was discovered.

[51 FR 39509, Oct. 29, 1986, as amended at 54 FR 41589, Oct. 11, 1989]

§ 1435.308 Delivery to CCC, quality, and storage facility requirements.

(a) The quantity of sugar which a processor may deliver to CCC in settlement of the loan shall not exceed the quantity of sugar which is shown on the note and security agreement approved by CCC minus any:

(i) Quantity that was redeemed or released for removal in accordance with a Marketing Authorization for Loan Collateral (Form CCC-681-1) and

(ii) Loss assumed by CCC in accordance with § 1435.307(b)(5) of this subpart.

(b) In order to be eligible to be delivered to CCC, sugar must meet the following minimum quality requirements

(1) Refined beet or cane sugar mus be:

(i) Dry and free flowing;

(ii) Free of excessive sediment; and

(iii) Free of any objectionable colo flavor, odor, or other characteristi which would impair the merchantab lity of such sugar or which woul impair or prevent the use of such sugar for normal commercial purposes.

(2) Raw cane sugar must be:

(i) Of reasonable grain size;

(ii) Free from excessive color or moisture; and

(iii) Free from any objectionable color, flavor, odor, or other characteristic which would impair the merchantability of such sugar or which would impair or prevent the use of such sugar for normal commercial purposes.

(3) Sugarcane syrup or edible molasses must be free from any objectionable color, flavor, odor, or other characteristic which would impair or prevent the use of such sugar for normal commercial purposes.

(4) Any type of sugar delivered to CCC must be free of any contamination by either natural or manmade substances and must not contain chemicals or other substances which are poisonous or harmful to humans or animals.

(c) All sugar which is delivered to CCC must be free and clear of any liens, mortgages, or other such encumbrances.

(d) Sugar may only be delivered to CCC in eligible storage. Eligible storage is any storage facility which: (1) Is owned or controlled by the processor; (2) is suitable for the storage and loading out of the sugar being delivered to CCC by the processor; (3) meets CCC Standards for Approval of Dry and Cold Storage Warehouses for Processed Agricultural Commodities, Extracted Honey, and Bulk Oils (7 CFR Part 1423); (4) is placed under a storage contract with CCC; and (5) consists of a storage structure which is determined by a representative of the county committee, or State committee if in a location not served by county committee, to afford safe storage of the sugar. If the sugar is delivered in or to an ineligible storage facility, the processor shall be responsible for all costs incurred in moving the sugar to an eligible storage facility.

(e) CCC shall, at any time, have the right to inspect the loan collateral and the storage facilities in which it is situated. The processor shall also furnish to CCC such production records as CCC considers necessary to verify compliance with the quantitative limitations set forth in §§ 1435.304 and 1435.306 of this subpart.

(f) The processor shall be liable to CCC for any damages suffered by CCC if: (1) The processor delivers ineligible sugar to CCC; or (2) the processor delivers sugar to CCC which is stored in ineligible storage. The processor shall be liable for such damages regardless of whether CCC inspected the sugar and storage facility prior to delivery.

§ 1435.309 Processor storage agreement.

(a) By executing a note and security agreement, the processor agrees to store any loan collateral sugar that is forfeited to CCC on behalf of CCC under the terms and conditions specified in this subpart and any storage agreement entered into between CCC and the processor. Should the terms of the storage agreement and the terms of these regulations conflict, the terms set forth in the regulations shall be applicable.

(b) The processor shall at all times be responsible for maintaining the quality and condition of the CCC-owned sugar in storage. The processor shall be liable to CCC for any damages suffered by CCC due to the failure of the processor to load out sugar meeting the eligibility criteria set forth in § 1435.308(b) of this subpart. Notwithstanding the foregoing, the processor shall not be liable for any damage, and CCC will bear its pro rata share of any loss, in the case of CCC-owned sugar stored at a commingled basis in eligible storage as set forth in § 1435.308(d) of this subpart, less any insurance proceeds and salvage value of the sugar to which CCC may be entitled, if the processor establishes to the satisfaction of CCC that each of the following conditions occurred:

(1) The loss or damage occurred without fault or negligence on the part of the processor;

(2) The loss resulted solely from an external cause (other than insect infestation, vermin, or animals) such as theft, fire, lighting, explosion, windstorm, cyclone, tornado, flood, or other acts of God;

(3) The processor gave the loanmaking office immediate notice of such loss or damage; and

(4) The processor made no fraudulent or misleading representation in the loan documents or in obtaining the loan.

(c) After delivery of the sugar to CCC, the processor shall store sugar delivered to CCC in the eligible storage where delivered for as long as deemed necessary by CCC after delivery of the sugar to CCC. However, if a sugar beet processor requires the storage space for other sugar during the period, the processor is required by CCC to maintain the refined beet sugar delivered to CCC in settlement of the loan in the storage where delivered, CCC will accept bagged sugar from the then current crop in substitution for the delivered bulk sugar if the sugar loan rate for the area where the bagged sugar is stored is equal to or exceeds the loan rate for the delivered bulk sugar.

(d) The processor shall remove and physically deliver the forfeited loan collateral in accordance with written instructions from CCC. All load out expenses shall be for the account of the processor.

(e) CCC shall make monthly storage payments to the processor for the period of time the processor stores the forfeited sugar for CCC. The storage payment rate shall be as agreed upon by CCC and the processor.

§ 1435.310 Fees, charges, and bonding.

(a) *Loan Service Fee.* A processor shall pay to CCC a loan service fee in connection with the disbursement of each loan. The amount of the service fee shall be determined and announced by the Executive Vice President, CCC, or the Executive Vice President's designee.

(b) *Interest.* Interest which accrues with respect to a loan shall be determined in accordance with Part 1405 of this chapter. Except with respect to called loans, loans which have not been repaid by the maturity date shall accrue interest in accordance with Part 1403 of this chapter beginning the day after the maturity date of the loan. With respect to called loans, interest shall accrue in accordance with Part 1403 of this chapter beginning on the required settlement date.

(c) *Late Payment Charges.* Late payment charges, if applicable, shall be charged in accordance with 7 CFR Part 1403.

(d) *Bonding.* (1) Except as provided in paragraph (d)(2) of this section, a processor making application for a sugar loan in accordance with § 1435.305 of this subpart shall post a bond or other financial assurance acceptable to CCC, that is payable to CCC in the event that the processor does not pay the producers of sugar beets or sugarcane the maximum benefits under the sugar price support program. Posting of the bond or other financial assurance shall be required prior to disbursement of any loan proceeds. The bond or other financial assurance must provide protection for an amount equal to the applicable regional support level(s) for sugar beets and/or sugarcane times 10 percent of the total annual quantity of sugar beets and/or sugarcane delivered to the processor by producers for processing in the previous year or, in the event such quantity cannot be determined, the quantity estimated by CCC that will be delivered to the processor for that crop.

(2) CCC and a processor may agree upon an alternative method of obtaining adequate financial assurance if CCC determines that such alternative method will result in adequate protection for CCC and the producer.

[51 FR 39509, Oct. 29, 1986, as amended at 54 FR 41589, Oct. 11, 1989]

§ 1435.311 Miscellaneous provisions.

(a) *Insurance.* CCC will not require the processor to insure the sugar pledged as collateral. However, if the processor insures such sugar and an indemnity is paid thereon, such indemnity shall inure to the benefit of CCC to the extent of its interest after first satisfying the processor's equity in the sugar involved in the loss.

(b) *Scheme or device.* The processor shall not reduce returns to the producer below those determined in accordance with the requirements of this subpart through any scheme or device whatsoever.

(c) *Processor indebtedness.* The regulations issued by the Secretary governing setoffs and withholding, 7 CFR Part 13, shall be applicable to the program in this subpart.

(d) *Liens.* If there are any liens or encumbrances on sugar pledged as collateral for a price support loan, waivers that fully protect the interest of CCC must be obtained even though the liens or encumbrances are satisfied from the loan proceeds. No additional liens or encumbrances shall be placed on the sugar after the loan is approved.

(e) *Appeals.* A producer or processor may obtain reconsideration and review of determinations made under this subpart in accordance with the regulations at 7 CFR Part 780.

(f) *Records and Information.* (1) Maintenance and Inspection of Records. ASCS, the Office of the Inspector General, USDA, and the Comptroller General of the United States shall have the right to have access to the premises of the processor in order to inspect, examine, and make copies of the books, records, accounts, and other written data as are deemed necessary by the examining agency to verify compliance with the requirements of this subpart. Such books, records, accounts, and other written data shall be retained by the processor for not less than three years from the loan disbursement date.

(2) *Information on Freight Costs and Related Shipping Expenses.* Any processor obtaining price support on eligible sugar must, upon the request of CCC, provide to CCC such information as CCC deems appropriate concerning freight and related shipping costs for the processor's most recent complete marketing year. By obtaining price support, processors are deemed to have agreed to provide such information when requested by CCC.

(g) *False certification.* Any false certification, including those made for the purpose of enabling a processor to obtain a price support loan to which it is not entitled, will subject the person making such certification to liability under applicable federal civil and criminal statutes.

(h) *Handling payments and collections of less than ten dollars.* In order to avoid unreasonable administrative costs incurred in making small payments and handling small accounts, amounts of $9.99 or less which are due to a processor will be paid only upon the processor's request. Deficiencies of $9.99 or less, including interest, may be disregarded unless demand for payment is made by CCC.

(i) *Death, incompetency, or disappearance.* In case of death, incompetency, or disappearance of any processor who is entitled to the payment of any sum in settlement of a loan, payment shall, upon proper application to the State committee, be made to the persons who would be entitled to such processor's payment under the regulations contained in 7 CFR Part 707—Payments Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent.

[51 FR 39509, Oct. 29, 1986, as amended at 54 FR 41589, Oct. 11, 1989]

§ 1435.312 Applicable forms.

The CCC forms for use in connection with this program will be available from the appropriate State committee or designated county committee. For any CCC form that refers to program participation by producers, the term "producer" shall mean "processor" when such form is used for participation in the sugar loan program.

§ 1435.313 Paperwork Reduction Act assigned numbers.

The Office of Management and Budget has approved the information collection requirements contained in these regulations in accordance with 44 U.S.C. Chapter 25 and OMB Number 0560-0093 has been assigned.

PART 1443—OILSEEDS

Subpart—Cottonseed Purchase Program Regulations

Sec.

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Subpart—Cottonseed Purchase Program Regulations

AUTHORITY: Secs. 4 and 5, 62 Stat. 1070 and 1072, as amended, secs. 301 and 401, 63 Stat. 1053 and 1054, as amended, sec. 601, 70 Stat. 212; 15 U.S.C. 714b and 714c, 7 U.S.C. 1447, 1421, 1446d.

SOURCE: 33 FR 15331, Oct. 16, 1968, unless otherwise noted.

§ 1443.1 General statement.

This subpart and any amendments hereto contain the basic terms and conditions under which CCC, as part of its price support program for cottonseed, will purchase from producers and participating ginners cottonseed of each crop for which an annual supplement to this subpart is issued. The annual supplement will specify the prices to be paid to producers and participating ginners by CCC for cottonseed of the applicable crop and will set forth other program provisions not contained in this subpart. CCC will purchase eligible cottonseed through county committees (a) from ginners who meet the requirements of § 1443.6 and who otherwise comply with the applicable provisions of this subpart (which ginners are referred to in this subpart as "participating ginners"), in areas where the State committee determines that crushers are paying ginners prices for cottonseed which are less than the f.o.b. prices at which CCC would purchase cottonseed from participating ginners, as specified in the applicable annual supplement, and (b) from eligible producers, in areas where the State committee determines that crushers or ginners or both are paying producers prices for cottonseed which are less than the prices at which CCC would purchase cottonseed from producers, as specified in the applicable annual supplement. As used in this subpart, "CCC" means the Commodity Credit Corporation, and "ASCS" means the Agricultural Stabilization and Conservation Service of the U.S. Department of Agriculture. As used in this subpart, the words or phrases "Person," "State committee," "County committee," and "County office manager" shall each have the meaning ascribed to such words or phrases in the regulations pertaining to Reconstitution of Farms, Allotments, and Bases, Part 719 of this title, and any amendment thereto.

§ 1443.2 Administration.

(a) *Responsibility.* The program will be carried out by ASCS under the general supervision and direction of the Executive Vice President, CCC. In the field the regulations in this subpart will be administered by State and county committees and the New Orleans ASCS Commodity Office located at Wirth Building, 120 Marais Street, New Orleans, La. 70112 (referred to in this subpart as "the New Orleans Office"). The purchase, transportation, handling, and storage of cottonseed acquired by CCC under this subpart prior to delivery of the cottonseed to a crusher or to a storage facility approved by the New Orleans Office (such storage facility is referred to in this subpart as "approved storage facility") will be administered through State and county committees. Documents and contracts relating to such operations may be executed on behalf of CCC by any member of the county committee, county office manager, or other employee of the county committee designated by the county office manager. Contracts for the storage and handling of cottonseed acquired by CCC under this subpart, subsequent to delivery of the cottonseed to a crusher or to an approved storage facility, and for the sale, crushing, and processing of cottonseed will be executed by CCC contracting officers in the New Orleans Office.

(b) *Limitation of authority.* State and county committees, county office managers, and the New Orleans Office, do not have authority to modify or waive any of the provisions of this subpart.

(c) *State committee.* The State committee may take any action authorized or required in this subpart to be taken by the county committee which has not been taken by such committee. The State committee may also (1) correct or require a county committee to correct any action taken by such county committee which is not in accordance with this subpart or (2) require a county committee to withhold taking any action which is not in accordance with this subpart.

(d) *Executive Vice President, CCC.* No delegation herein to a State or county committee or to the New Orleans Office shall preclude the Executive Vice President, CCC, or his designee, from determining any question arising under this subpart or from reversing or modifying any determination made by a State or county committee, or by the New Orleans Office.

§ 1443.3 Availability of program.

(a) *Area.* Subject to the provisions of § 1443.1, the purchase program will be available in all cotton-producing areas of the United States.

(b) *Time.* Purchases of cottonseed of any crop will be made in an area, when the State committee determines that such purchases are necessary to make the cottonseed price support program effective, from the date of such determination through the last day of February of the calendar year following the year in which the crop is grown. Whenever the final date of availability falls on a nonworkday for county offices, the applicable final date of availability shall be extended to the next workday.

§ 1443.4 Eligible producer.

An eligible producer is any individual, partnership, corporation, association, trust, estate, or other legal entity, or a State or political subdivision thereof, or an agency of such state or political subdivision, producing cottonseed in the capacity of landowner, landlord, tenant, or sharecropper.

§ 1443.5 Eligible cottonseed.

Cottonseed is eligible cottonseed if it meets the following requirements:

(a) *Area of production.* The cottonseed must be produced in the United States by an eligible producer.

(b) *Liens.* The cottonseed must be free and clear of liens or encumbrances, or proper waivers must be obtained.

(c) *Beneficial interest.* The beneficial interest in the cottonseed tendered to CCC by an eligible producer must be in the producer and must always have been in him or in him and a former producer whom he succeeded before the cottonseed was harvested. Any producer tendering cottonseed for purchase by CCC must have the legal right to sell the cottonseed. Eligible producers who are members of a cooperative participating ginner may act collectively through such ginner in selling their eligible cottonseed to CCC if (1) the cottonseed to be sold is delivered to the cooperative gin by such producer-members, and (2) the cooperative gin has been granted the legal right to sell the cottonseed by such producer-members.

(d) *Succession of interest.* To meet the requirements of succession to a former producer, the rights, responsibilities, and interest of the former producer with respect to the farming unit on which the cottonseed was produced shall have been substantially assumed by the person claiming succession. Mere purchase of a crop prior to harvest, without acquisition of any additional interest in the farming unit on which the cottonseed is produced shall not constitute succession.

(e) *Doubtful cases.* Any producer in doubt as to whether his interest in the cottonseed complies with the requirements of this section, before requesting price support, should make available to the county committee all pertinent information which will permit a determination to be made by CCC.

§ 1443.6 Participating ginners.

A participating ginner, to be eligible to sell cottonseed to CCC, must execute a Form CCC-901, Participating Ginner's Agreement, with CCC, and pay producers not less than the CCC purchase price of cottonseed to producers announced in the annual supplement to this subpart. The provisions of the Participating Ginner's Agreement shall continue in effect through the last day of February of the calendar year following the year in which the crop is grown, unless the ginner is notified in writing by the county committee that he is no longer eligible to participate in the program or the ginner gives written notice to the county committee that he is withdrawing from the program. In the event of any such notification, the ginner will no longer be eligible to tender cottonseed to CCC for purchase. The provisions of the Participating Ginner's Agreement shall include an assurance that the ginner's participation in the price support program will be conducted and his facilities operated in compliance with all requirements imposed by or pursuant to the regulations governing nondiscrimination in federally assisted programs of the Department of Agriculture, Part 15 of this title, which effectuates Title VI of the Civil Rights Act of 1964. All cottonseed tendered to CCC by a participating ginner shall be cottonseed from cotton which is ginned at his facility; cottonseed acquired by the ginner which is not from such cotton shall be kept separate and apart from cottonseed tendered or to be tendered to CCC. The maximum quantity of cottonseed from any crop which a participating ginner may tender to CCC is the quantity of seed of such crop which was ginned from cotton at his facility and which he has purchased from eligible producers at not less than the prices required by this section.

§ 1443.7 Grade basis for purchase price.

(a) *Purchases from producers.* (1) Except as provided otherwise in this paragraph (a), the grade of cottonseed purchased from a producer by CCC shall be considered to be the average grade for the county in which the purchase is made on the basis of the latest cottonseed grade report for the county published by ASCS, or on such other basis as the Executive Vice President, CCC, may approve.

(2) For any county where both upland and American-Egyptian cotton are grown, the ASCS grade report for such county shall specify the average grade for each such type of cottonseed and each such type of cottonseed shall be purchased at prices determined on the basis of the average grade for each such type of cottonseed.

(3) For any county where both upland and Sea Island or Sealand cottonseed are grown, the ASCS grade report for such county will specify the average grade for all cottonseed in the county without regard to type and the purchase price for all cottonseed produced in the county shall be determined on the basis of such average grade.

(4) Whenever there is insufficient grade information available to make a determination of the average grade of cottonseed of a particular crop produced in a county, the grade of any cottonseed purchased shall be considered to be grade 90, unless another grade is approved by the State committee on the basis of official chemical analysis of the cottonseed being purchased in the area, or on the basis of other reasonable data.

(5) If a producer delivers to CCC at least 20,000 pounds of cottonseed within any period of 3 consecutive days, the grade of such cottonseed may, at the producer's request, be determined in accordance with the C&MS Service and Regulatory Announcement No. 179, as amended, "Standards for Grades of Cottonseed Sold or Offered for Sale for Crushing Purposes Within the United States" (hereinafter referred to as "the Cottonseed Standards"), §§ 61.101 through 61.104 of this title, by chemical analysis of samples drawn from the cottonseed by federally licensed cottonseed samplers or by such other persons as may be approved by the county committee and forwarded to and analyzed by federally licensed cottonseed chemists. The cost of such sampling and analysis shall be borne by CCC.

(b) *Purchase from ginners.* (1) The grades of cottonseed purchased from participating ginners by CCC shall be determined in accordance with the Cottonseed Standards by chemical analysis of samples drawn from the cottonseed by federally licensed cottonseed samplers or by such other persons as are approved by the county committee, and forwarded to and analyzed by federally licensed cottonseed chemists. The cost of such sampling and analysis shall be borne by CCC.

(2) Cottonseed which is "below-grade" or "off-quality," as defined in the Cottonseed Standards, will be purchased from participating ginners by CCC at the market value at time of tender of such cottonseed, as determined by CCC.

(3) A ginner tendering cottonseed of any crop for purchase by CCC must not have paid any producer for cottonseed of that crop purchased by the ginner less than the price which CCC would pay to the producer for such cottonseed, as specified in the applicable annual supplement to this subpart, based on the average grade for the county in which the gin is located, determined as provided in paragraphs (a) (1) through (4) of of this section.

(4) Notwithstanding the preceding requirements as to price, a participating ginner, after first notifying the county committee of the county where the gin is located of his intention to do so, may reduce the price paid to producers below the price established on the basis of the average grade for the county: *Provided*, That:

(i) He shall not pay any producer for cottonseed, during the period the ginner is paying such reduced price, less than the price which CCC would pay to the producer for such cottonseed, as specified in the applicable annual supplement to this subpart, based on the average grade of cottonseed produced at the gin during such period;

(ii) The average grade of cottonseed produced at the gin during such period shall be determined on the basis of official chemical analysis covering such cottonseed or on such other reasonable basis as may be approved by the State committee; and

(iii) The ginner furnishes the county office with certified copies of such chemical analysis or other evidence satisfactory to the State committee, showing the average grade of cottonseed produced at the gin during such period.

If it is determined by the State committee or county committee that any ginner has paid any producer for cottonseed of any crop less than the minimum price which he was obligated to pay under this paragraph (b), such ginner shall, without prejudice to any other rights which CCC may have, be ineligible to make any further sales to CCC of cottonseed of that crop, unless he first pays each such producer the difference between the price previously paid to the producer and the price the producer should have received.

(c) *Advances by cooperative gins*. If the participating ginner is a cooperative gin and if the marketing agreements between the gin and its members provide for advances, the gin may advance a part of the purchase price at the time each lot of cottonseed is purchased and pay the balance after completion of ginning of the applicable crop but not later than December 31 of the calendar year following the year in which the crop of cotton is grown. Such balance shall be made in cash unless the State committee has approved deferred payment by issuance of revolving-fund certificates or by other methods of retention of funds for capital purposes. The State committee will approve deferred payment only by cooperative gins which it determines (1) are organized under applicable State law as an association of persons who are engaged in the production of agricultural commodities, (2) meet producer ownership, membership meeting and voting requirements of applicable State law, (3) have more than 50 percent of their equity capital owned by producer-members, and (4) are operating on a financially sound basis. Any such cooperative gin desiring approval to make deferred payment shall submit its application for approval to the county committee of the county where the gin is located not later than the date Form CCC-901, Participating Ginner's Agreement, is filed, or such later date as the State committee may for good cause approve. The cooperative gin shall submit with its application a certified statement that the gin meets the requirements of paragraphs (c) (1) through (3) of this section and a complete and accurate statement of its current financial condition. The cooperative gin shall also submit with its application a copy of its bylaws, board of directors resolution or other document which authorizes the gin to make deferred payments for the cottonseed and such other information regarding its cooperative status and financial condition as the State committee may request.

[33 FR 15331, Oct. 16, 1968; 33 FR 15703, Oct. 24, 1968]

§ 1443.8 Payment for cottonseed and transportation.

(a) *Payment and delivery.* (1) Payments for cottonseed purchased from producers and participating ginners by CCC and for authorized transportation performed by such producers and ginners in accordance with paragraph (a)(2) of this section shall be made by county offices by means of sight drafts drawn on CCC.

(2) The cottonseed shall be delivered to CCC f.o.b. conveyance or carrier at the gin, or at a point designated by the county committee. If the county committee designates a point of delivery other than the gin, the producer or ginner shall be paid for transporting the seed from the gin to such point at a rate not in excess of the local commercial rate for such transportation services, as determined by the county committee.

(b) *Passage of title.* Title and risk of loss to the cottonseed shall pass to CCC upon delivery of the cottonseed to CCC.

§ 1443.9 Approved forms.

The approved forms, together with the provisions of this subpart, including amendments thereto, and the applicable supplement for the crop, shall govern the rights and responsibilities of producers and participating ginners under the CCC cottonseed purchase program. Approved forms may be obtained from county offices. Documents executed by an administrator, agent, executor, or trustee will be acceptable only where valid in law.

(a) *Producers.* Producer's Voucher, Form CCC-905, shall be executed by the producer when his cottonseed is purchased by CCC.

(b) *Cotton ginners.* (1) Each cotton ginner desiring to sell cottonseed to CCC pursuant to this subpart shall, prior to tender of any cottonseed for sale, file a Participating Ginner's Agreement, Form CCC-901, with the county office of the county in which each of his gins is located. The filing of such agreement does not obligate the ginner to sell any cottonseed to CCC, but if cottonseed of any crop is tendered by the ginner for sale to CCC under this subpart, the ginner must have complied with all provisions of this subpart applicable to purchases of cottonseed of that crop by a participating ginner. A cooperative gin desiring approval to make deferred payment of part of the purchase price of the cottonseed, as provided in paragraph (c) of § 1443.7, shall submit its application for approval to the county committee of the county where the gin's office is maintained.

(2) The ginner shall prepare and execute a Ginner's Voucher and Certificate, Form CCC-904, covering cottonseed tendered to CCC for purchase and shall deliver the form to the county office at time the seed is delivered to CCC for purchase.

(3) Each Form CCC-904 submitted by a ginner to the county office shall be supported by weight certificates or warehouse receipts covering the cottonseed purchased which have been issued by a crusher, an approved storage facility, or a representative of the county committee at a designated storage site. In the absence of warehouse receipts guaranteeing grade, Form CCC-904 shall be supported by official chemical analysis certificates covering the cottonseed and identifying such cottonseed by lot number or receipt numbers, or both, and weights.

§ 1443.10 Determination of quantity.

The quantity of cottonseed purchased from a producer by CCC shall be the gross weight (or if the cottonseed is graded as provided in § 1443.7(a)(5), the net weight) actually delivered to CCC, as determined by a representative of the county committee, by an approved storage facility, or by a crusher. The quantity of cottonseed purchased from a producer by a participating ginner shall be the gross weight of the cottonseed as customarily determined by the ginner when making purchases of cottonseed from producers. The quantity of cottonseed purchased from a ginner by CCC shall be the net weight of the cottonseed which is the gross weight thereof less the weight of all foreign matter in excess of 1 percent.

§ 1443.11 Personal liability.

If the producer or participating ginner has made a fraudulent representation in connection with a price support purchase by CCC under this subpart or in the purchase documents, he shall be personally liable, aside from any additional liability under criminal or civil fraud statutes, for any loss which CCC sustains upon the cottonseed delivered under the purchase. For the purpose of this program such loss shall be deemed to be the price paid to the producer or participating ginner on the cottonseed delivered under the purchase plus all costs sustained by CCC in connection with the cottonseed together with interest on such amounts at the rate announced in a separate notice published in the FEDERAL REGISTER, less the market value, as determined by CCC, of the cottonseed on the date of delivery, or the sales price if the cottonseed is sold in order to determine its market value.

§ 1443.12 Setoffs.

When CCC makes direct purchases of cottonseed from producers, setoffs will be made as follows:

(a) *Facility and drying equipment loans.* If any installment(s) on any loan made by CCC on farm storage facilities or drying equipment is payable under the provisions of the note evidencing such loan out of any amount due the producer under the program provided for in this subpart, the producer must designate CCC as payee of such amount to the extent of such installment(s), but not to exceed that portion of the amount remaining after deduction of amounts due prior lienholders.

(b) *Producers listed on county claim control record.* If the producer is indebted to CCC, or to any other agency of the United States and such indebtedness is listed on the county claim control record, amounts due the producer under the program provided for in this subpart, after deduction of amounts provided for in paragraph (a) of this section, shall be applied, as provided in the Secretary's Setoffs and Withholdings Regulations, Part 13 of this title as amended, to such indebtedness.

(c) *Producer's right.* Compliance with the provisions of this section shall not deprive the producer of any right he would otherwise have to contest the justness of the indebtedness involved in the setoff action, either by administrative appeal or by legal action.

§ 1443.13 Books and records.

Each participating ginner tendering cottonseed to CCC for purchase shall keep accurate books, records, and accounts with respect to all purchases of cottonseed (including the name of producer, date of receipt, weight, and purchase price of each lot of cottonseed purchased) and all other transactions under this subpart for a period of at least 3 years from the last day any cottonseed is tendered to CCC for purchase under the applicable Participating Ginner's Agreement. The participating ginner shall permit authorized employees of the U.S. Department of Agriculture at any time during customary business hours to inspect, examine, audit, and make copies of such books, records, and accounts.

§ 1443.14 Benefits and contingent fees.

(a) *Officials not to benefit.* No member of or Delegate to the Congress of the United States or Resident Commissioner, shall be admitted to any share or part of any contract resulting from tenders of cottonseed by a participating ginner under this subpart or to any benefit that may arise therefrom, but this provision shall not be construed to extend to such a contract if made with a corporation for its general benefit and shall not extend to any benefits that may accrue from such contract to a member of or Delegate to the Congress or a Resident Commissioner in his capacity as a producer of cottonseed.

(b) *Contingent fees.* By tendering cottonseed to CCC for purchase under this subpart the participating ginner warrants that no person or selling agency has been employed or retained to solicit or secure the Participating Ginner's Agreement upon an understanding or agreement for a commission, percentage, brokerage, or contingent fee except bona fide employees or bona fide established commercial or selling agencies maintained by the participating ginner for the purpose of selling cottonseed. For breach or violation of this warranty, CCC shall have the right to annul the Participating Ginner's Agreement without liability, or in its discretion to deduct from the purchase price of the cottonseed the full amount of such commission, percentage, brokerage, or contingent fee.

§ 1443.15 Nondiscrimination in employment.

(a) *Equal opportunity clause.* During the period between the date the participating ginner files his Participating Ginner's Agreement and the earlier of the date on which he gives the county committee the notice referred to in § 1443.6, or the date on which he completes his final delivery to CCC under this subpart, the participating ginner agrees as follows:

(1) The participating ginner will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The participating ginner will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The participating ginner agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the county committee setting forth the provisions of this nondiscrimination clause.

(2) The participating ginner will, in all solicitations or advertisements for employees placed by or on behalf of the participating ginner, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

(3) The participating ginner will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the county committee, advising the labor union or workers' representative of the participating ginner's commitments under this nondiscrimination clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The participating ginner will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The participating ginner will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the participating ginner's noncompliance with the nondiscrimination clause of this contract, or with any of such rules, regulations, or orders, the Participating Ginner's Agreement may be canceled, terminated, or suspended in whole or in part and the participating ginner may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in the said Executive order by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The participating ginner will include the provisions of paragraphs (a) (1) through (7) of this section in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The participating ginner will take such action with respect to any

subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however,* That in the event the participating ginner becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the participating ginner may request the United States to enter into such litigation to protect the interests of the United States.

(b) *Substitute terms.* Effective October 14, 1968, the words "race, color, religion, sex, or national origin" shall be substituted for the words "race, creed, color, or national origin" wherever they appear in paragraph (a) of this section.

(c) *Certification of nonsegregated facilities.* By the filing of a Participating Ginner's Agreement, the participating ginner certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. He certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The participating ginner agrees that breach of this certification is a violation of the Equal Opportunity clause in this section. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms, and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise. He further agrees that (except where he has obtained identical certifications from proposed subcontractors for specific time periods) he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause; that he will retain such certifications in his files; and that he will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES

A Certification of Nonsegregated Facilities, as required by the May 9, 1967, order (32 FR 7439, May 19, 1967) on Elimination of Segregated Facilities, by the Secretary of Labor, must be submitted prior to the award of a subcontract exceeding $10,000 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually.)

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001 or 15 U.S.C. 714m(a).

PART 1446—PEANUTS

Subpart—Peanut Warehouse Storage Loans and Handler Operations for the 1986 Through 1990 Crops

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Subpart—Peanut Warehouse Storage Loans and Handler Operations for the 1986 Through 1990 Crops

AUTHORITY: 7 U.S.C. 1359, 1375, 1421 *et seq.*; 15 U.S.C. 714 *et seq.*

SOURCE: 51 FR 44764, Dec. 12, 1986, unless otherwise noted.

GENERAL

§ 1446.70 General statement.

(a) *Scope.* This subpart sets forth the terms and conditions under which producers and handlers may trade in the 1986 through 1990 crops of peanuts and the terms and conditions under which eligible producers acting collectively through specified marketing associations (referred to severally in this subpart as "the association") may obtain price support on their 1986 through 1990 crops of farmers stock peanuts. Subject to the provisions of this subpart:

(1) Eligible farmers stock peanuts produced by eligible producers which are quota peanuts shall be eligible for price support at the quota support rate; and

(2) Farmers stock peanuts which are not quota peanuts are considered "additional peanuts" and shall be eligible for price support at the additional support rate. Additional peanuts may only be marketed through contracts with handlers or by being pledged as collateral for price support loans under the terms of this subpart. Annual notice of determinations will specify support rates, loan rates, and, where necessary, supplements to this subpart will specify other terms and conditions not contained in this subpart. Specific terms and conditions relating to contracts for sales of peanuts placed under a price-support loan will be set out in announcements issued by the Commodity Credit Corporation (CCC).

(b) *Price support advances.* Producers may obtain price support, at rates announced by the Secretary, through the applicable association. Each association will make appropriate price support loan advances on peanuts delivered to it by producers at warehouses operating under peanut receiving and warehouse contracts with the association. CCC will make a loan (referred to in this subpart as a "warehouse storage loan") to the association. Such loans will be secured by the peanuts received by or on behalf of the association.

(c) *Farm-stored loans and purchases from producers.* Regulations setting forth the terms and conditions under which CCC will make farm storage loans directly to producers and purchase peanuts directly from producers will be published separately in the FEDERAL REGISTER and codified at 7 CFR Part 1421 or in such place as may be indicated by amendments to that Part.

§ 1446.71 Administration.

(a) *Responsibility.* The Tobacco and Peanuts Division, Agricultural Stabilization and Conservation Service (ASCS), will administer this subpart under the general direction and supervision of the Executive Vice President of CCC.

(b) *Limitation of authority.* No State and county committee or its employees or representatives or any association or its employees or representatives may modify or waive any of the provisions of this subpart or any amendment or supplement thereto.

(c) *Supervisory authority.* No delegation of authority contained in this subpart shall preclude the Executive Vice President of CCC, or the Executive Vice President's designee, from determining any questions arising under the regulations or from reversing or modifying any determinations made pursuant to such delegation.

(d) *Forms.* Regardless of whether specified elsewhere in this subpart, the reference to any ASCS or CCC form shall be deemed to include documents approved for general use in lieu of such forms by the CCC.

[51 FR 44764, Dec. 12, 1986; 51 FR 46997, Dec. 30, 1986]

§ 1446.72 Definitions.

The regulations of this subpart incorporate the definitions and provisions of Parts 718, 719, 729, 780, 1402, 1403, 1408, 1421, 1422 and 1498 of this title except where the context or subject matter or provisions of the regulations in this subpart otherwise requires. References contained in this subpart to other parts of this chapter or title include any subsequent amendments to those referenced parts. Any reference to the Executive Vice President of CCC shall also apply to any persons designated by the Executive Vice President. Unless the context or subject matter otherwise requires, the following words and phrases as used in this subpart and in all related instructions and documents shall have the following meanings:

(a) *Additional peanuts.* Any peanuts which are marketed from a farm other than peanuts marketed or considered marketed as quota peanuts.

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(b) *Additional support rate.* The loan rate applicable to additional peanuts.

(c) *Adequate assets.* Assets less liabilities determined by the area association in accordance with instructions issued by the Executive Vice President of CCC to be sufficient to assure export of additional peanuts in compliance with the provisions of this subpart. Assets may include, but are not limited to, accounts receivable, value of inventory, equipment, plant, property and investments. Liabilities may include accounts payable, mortgages, loans, letters of credit and other obligations.

(d) *Adequate facilities.* Weighing, grading, storage, shelling and/or milling equipment and other physical plant and equipment owned, leased or subleased by a handler, as determined by the area association in accordance with instructions issued by the Executive Vice President of CCC, to be sufficient to receive, store, process and ship all the peanuts to be handled in, by, through, or in connection with such facilities into the export or domestic market.

(e) *ASCS.* The Agriculture Stabilization and Conservation Service of the United States Department of Agriculture.

(f) *Association.* An area marketing association selected and approved by the Secretary which is operated primarily for the purpose of conducting loan activities as provided for in this subpart.

(g) *CCC.* The Commodity Credit Corporation, an agency and instrumentality of the United States within the Department of Agriculture.

(h) *Commercial quantities.* Any quantity of peanuts in excess of 110 pounds imported by any person during any marketing year unless the Executive Vice President shall otherwise agree in writing.

(i) *Contract additional peanuts.* Additional peanuts for crushing or exportation, or both, for which a contract has been entered into between a handler and producer in accordance with provisions of this subpart.

(j) *Crushing.* The processing of peanuts to extract oil for food uses and meal for feed uses.

(k) *Domestic edible use.* Domestic edible use means, for the purpose of regulations found in this subpart:

(1) Use of peanuts for milling to produce domestic food peanuts (including the processing of peanuts into flakes);

(2) Use of peanuts for seed, excluding unique strains which meet both of the following requirements: (i) They are not commercially available and (ii) they are used for the production of green peanuts; and

(3) Use of peanuts on a farm.

(l) *Edible export standard for contract additional peanuts.* The standards for raw shelled on inshell peanuts of any crop exported for human consumption constituting U.S. Standards grade requirements, or modifications thereof, and requirements as to wholesomeness, as are specified in the outgoing quality regulations for such crop set forth in the Marketing Agreement for Peanuts (No. 146), except that peanuts shown by the applicable Federal-State Inspection Certificate to deviate from these requirements shall be considered as meeting such requirements if the handler certifies to the association that such deviations are:

(1) Acceptable to the export buyer; and

(2) Fall within the range of deviations allowable under the Marketing Agreement.

(m) *Eligible country.* Any destination outside the United States, except that, neither Canada nor Mexico shall be considered an eligible country for the purpose of exporting peanut products other than treated seed peanuts.

(n) *Export and exportation.* A shipment of peanuts or peanut products from the United States directed to a country outside the United States for which a statement, which is signed by the handler and specifies the name and address of the consignee, is made available to the association or CCC, or, upon request by the association or CCC, for which a consignee receipt is made available to the association or CCC.

(o) *Farmers stock peanuts.* Picked or threshed peanuts produced in the United States which have not been changed (except for removal of foreign material, loose shelled kernels, and excess moisture) from the condition in which picked or threshed peanuts are customarily marketed by producers, plus any loose shelled kernels removed by producers from farmers stock peanuts.

(p) *Forms*—(1) *Form ASCS-1007.* The Inspection Certificate and Sales Memorandum for farmers stock peanuts.

(2) *Form CCC-1006.* Application for Handler to Handler Transfer of Contract Additional Peanuts for Crushing or Export.

(3) *Form FV-95.* The Federal-State Inspection Service Peanut Inspection Note sheet.

(4) Form FV-184. The Federal-State Inspection Service Inspection certificate for milled peanuts.

(q) *Fragmented peanuts.* Peanuts meeting the qualifications for fragmented peanuts as defined in the outgoing quality regulations of the Peanut Marketing Agreement (No. 146) applicable to the crop year in which the peanuts were produced.

(r) *Handler.* Any person or firm, or subdivision thereof, registered with ASCS for the purpose of acquiring peanuts for resale, domestic consumption, processing, exportation, or crushing through a business of buying and selling peanuts or peanut products; provided further that a party that handles peanuts fails to register with ASCS shall be fully subject to all provisions including the penalty provisions in the same manner as registered parties and shall be subject to penalty for non-registration.

(s) *Inspector.* A Federal or Federal-State inspector authorized or licensed by the Secretary, U.S. Department of Agriculture, to grade peanuts.

(t) *Loan rate.* The national average support rate for quota or additional peanuts adjusted for differences in grade, type, quality, location and other factors and determined by the Secretary to be applicable to such peanuts.

(u) *Loan value.* The amount of price support loan eligibility with respect to a lot of eligible farmers stock peanuts computed for quota or additional peanuts as applicable on the basis of weight and the loan rate announced for peanuts of the same type, grade, quality and location as those in such lot.

(v) *Liquidated damages.* An amount due, not as a penalty but as an amount estimated to be the probable damage to the peanut price support program due to an action taken by a producer or handler which is not otherwise subject to a penalty.

(w) *Lot*—(1) *Farmers stock peanuts.* That quantity of farmers stock peanuts for which one ASCS-1007 or other inspection certificate is issued. For farmers stock peanuts delivered to the association for a price support loan advance, a lot shall consist of not more than the contents of one vehicle, except that a lot may consist of the contents of two or more vehicles if such vehicles do not exceed a total of approximately 24,000 pounds of peanuts.

(2) *Milled peanuts.* That quantity of milled or shelled peanuts for which one FV-184/Peanuts, Inspection Certificate (Peanuts), or substitute approved for general use by the Executive Vice President is issued. The lot size of such peanuts in bulk or bags shall not exceed 200,000 pounds.

(x) *Marketing card.* Form ASCS-1002 or substitute approved for general use by the Executive Vice President issued each year in accordance with Part 729 of this title by ASCS county offices to producers for use in marketing farmers stock peanuts of the applicable crop year. Each Form ASCS-1002 or substitute shall indicate:

(1) The farm operator's eligibility for quota price support;

(2) The pounds that may be marketed as quota peanuts;

(3) The pounds that may be marketed as contract additional peanuts along with the handler number of the contracting handler; and

(4) The eligibility of additional peanuts for immediate buyback.

(y) *Marketing penalties*—(1) *Producer.* For producers, the penalties prescribed in the poundage quota and marketing regulations, Part 729 of this title, which shall be computed and collected in accordance with those regulations and are effective for the applicable crop.

(2) *Handler.* For handlers, the penalties which are prescribed, computed,

assessed and collected in accordance with this subpart and are effective for the applicable crop.

(z) *Marketing year.* The period beginning on August 1 of the year in which the peanuts of the applicable crop are planted and ending on July 31 of the following year.

(aa) *Net weight.* Unless otherwise specified in this subpart, that weight of farmers stock peanuts obtained by deducting from the gross scale weight of the peanuts:

(1) Foreign material; and

(2) Moisture in excess of 7 percent.

(bb) *Peanut meal.* Any meal, cake pellets or other forms or residue remaining after extraction or explusion of oil from peanut kernels, but not including pressed peanuts.

(cc) *Peanut products.* Any products, other than peanut oil or meal, which is manufactured or derived from peanuts including, but not limited to, peanut candy, peanut butter, treated seed peanuts, roasted shelled or in shell peanuts, pressed peanut, and peanut granules.

(dd) *Peanut receiving and warehouse contract.* Form CCC-1028 (Identity Preserved), Form CCC-1028-A (Commingled Storage), or any other form approved for general use by CCC for the purpose of receiving and warehousing loan collateral peanuts.

(ee) *Peanut Segregations.* Peanuts as identified and determined by the Federal-State Inspection Service to be:

(1) *Segregation 1* on the basis that they are farmers stocks peanuts which:

(i) Have at least 99 percent peanuts of one type;

(ii) Have not more than two percent damaged kernels nor more than 1.00 percent concealed damage caused by rancidity, mold or decay, nor more than 0.5 percent freeze damage;

(iii) Have not more than 14.49 percent LSK's;

(iv) Are free from any offensive odor; and

(v) Are free from visible Aspergillus flavus mold.

(2) *Segregation 2* on the basis that they are farmers stock peanuts which are free from visible Aspergillus flavus mold and which either:

(i) Have less than 99 percent peanuts of one type; or

(ii) have more than two percent damaged kernels or more than 1.00 percent concealed damage caused by rancidity, mold, or decay, or more than 0.5 percent freeze damage; or

(iii) Have more than 14.49 percent LSK's; or

(iv) Have an offensive odor.

However, if such peanuts are placed under additional loan and purchased under the immediate buyback procedure, as provided in § 1446.113(a) of this subpart, such peanuts shall be considered Segregation 1 additional peanuts for loan pool accounting purposes except that peanuts of this segregation may only be purchased as buybacks subject to the terms and conditions specified by the Executive Vice President, CCC.

(3) *Segregation 3* on the basis that they are farmers stock peanuts which have visible Aspergillus flavus mold. However, if such peanuts are placed under additional loan and purchased under the immediate buyback procedure as provided in § 1446.113(a) of this subpart, such peanuts shall be considered Segregation 1 additional peanuts for loan pool accounting purposes; however, peanuts of this segregation may only be purchased as buybacks subject to the terms and conditions specified by the Executive Vice President, CCC.

(ff) *Pools.* Accounting pools established by the association for quota peanuts and additional peanuts not under contract, and for which records are maintained by area and by segregation.

(gg) *Quota peanuts.* Peanuts which are: (1) Eligible for domestic edible uses, and (2) marketed or considered marketed from a farm as quota peanuts pursuant to the provisions of Part 729 of this title and are not in excess of the effective farm poundage quota.

(hh) *Quota support rate.* The loan rate applicable to quota peanuts.

(ii) *Raw Peanuts.* In shell peanuts, shelled peanuts, blanched peanuts or any other classification of peanuts as designated by CCC which have not passed through any other processing operations are designated as raw peanuts by the CCC.

(jj) *Sound mature kernels.* Peanut kernels as identified and determined by the Federal-State Inspection Service to be sound mature kernels.

(kk) *Sound split kernels.* Peanut kernels as identified and determined by the Federal-State Inspection Service to be sound split kernels.

(ll) *Total kernel content.* The total kernel content (TKC) of a lot of peanuts which shall be deemed to consist of the total of sound mature kernels (SMK), sound splits (SS), and all remaining kernels which shall consist of damaged kernels (DK), other kernels (OK), and loose shelled kernels (LSK), as identified and determined by the Federal-State Inspection Service.

(mm) *Type.* The generally known types of peanuts (i.e., Runner, Spanish, Valencia, and Virginia), as identified and determined by the Federal-State Inspection Service.

(nn) *United States.* The 50 States of the United States, Puerto Rico, the territories and possessions of the United States, and the District of Columbia.

(oo) *United States government agency.* Any department, bureau, administration, or other agency of the Federal Government or corporation wholly owned by the Federal Government.

(pp) *Valencia type peanuts produced in the Southwest suitable for cleaning and roasting.* Valencia peanuts produced in the Southwest which are identified, determined and classified by the Federal-State Inspection Service as:

(1) *Bright hull—suitable for cleaning and roasting.* Valencia type peanuts produced in the Southwest containing not more than 25 percent shells damaged by:

(i) Discoloration;

(ii) Cracks or broken ends; or

(iii) Both discoloration, and cracks or broken ends.

(2) *Dark hull.* Valencia type peanuts which do not meet the requirements of bright hull Valencia type peanuts as defined in paragraph (pp)(1) of this section.

[51 FR 44764, Dec. 12, 1986; 51 FR 45837, Dec. 22, 1986; 53 FR 35985, Sept. 15, 1988]

§§ 1446.73—1446.76 [Reserved]

BASIC HANDLER OPERATIONS

§ 1446.77 Handler registration.

(a) *General applicability.* Each person who plans to acquire peanuts for processing or resale must first be approved as a handler by the area association in accordance with instructions issued by the Executive Vice President of CCC. However, any person acting in the capacity as a handler shall be subject to all penalties that may apply to handlers under this subpart and all other remedies that apply against handlers, irrespective of whether such person is registered under this subpart. Further, such persons will be subject to penalties for non-registration as may apply. Such approval shall be evidenced by a handler number issued in accordance with this subpart. To receive a handler number, a person must complete and submit an application for each area in which the handler will handle peanuts and apply for registration with the relevant area marketing association. The applicant must demonstrate compliance with paragraphs (b) and (c) of this section. The application shall be submitted on a form approved for general use by CCC.

(b) *Handlers of loan peanuts.* To handle quota or additional loan peanuts, a person must enter into a warehousing contract, Form 1028 or 1028-A, unless the Executive Vice President agrees otherwise in writing, and meet all requirements of the contract with respect to receiving, handling and storage requirements.

(c) *Handlers of contract additional peanuts.* To handle contract additional peanuts, a person must meet the requirements of §§ 1446.105 and 1446.106 of this subpart.

§ 1446.78 Peanut buyer card and buying point card.

The association which registers a handler will issue an embossed peanut buyer card which will show the handler's registration number, name and address. The handler will use the card for identification when buying or selling peanuts. The association will issue a buying point identification card to the Federal-State Inspection Service for delivery to each handler who operates a buying point at which peanuts are inspected. The buying point card will show a number used to identify the physical location of the buying point where the peanuts are inspected.

§ 1446.79 Examination of producer's marketing cards.

All handlers shall examine the producers' marketing cards and record each purchase or delivery of peanuts as required in § 1446.80 of this subpart and in accordance with procedures established by ASCS. Any peanuts delivered by producers under an additional peanut contract in excess of the provisions of such contract shall be considered as having been marketed as quota peanuts. The handler shall not accept peanuts from any producer who does not present a marketing card and farm identification card at the time of delivery.

§ 1446.80 Marketing card entries.

Immediately after each lot of peanuts is marketed, the handler shall make the following entries on the marketing card from the ASCS-1007 or ASCS-1030, Report of Purchase of Noninspected Peanuts:

(a) The ASCS-1007 serial number which identifies the lot of peanuts, or the date of marketing if the peanuts were not inspected;

(b) The net pounds marketed;

(c) The unused poundage quota balance remaining after the marketing;

(d) The unused contract additional poundage balance remaining after the marketing;

(e) The handler's number or, for loan peanuts, the association number;

(f) For inspected peanuts, the buying point number;

(g) The type of peanuts marketed; and

(h) Any penalties or claims collected.

§ 1446.81 Collection of marketing penalties owed by a producer.

(a) *Marketing penalties.* A person shall be liable to CCC for any penalty which is known to such person or should be known to such person, to be due on peanuts at the time the person buys or otherwise acquires those peanuts from a producer. The handler shall deduct the penalty from the price paid to the producer. If such person fails to collect the penalty due on any marketing of peanuts from a farm and to forward such penalty to CCC, such person and each of the producers on the farm shall be held jointly and severally liable to CCC for the amount of the penalty.

(b) *Penalty for errors on marketing card.* The producer and the handler are jointly and severally liable for any penalties which may be due if the handler made an error or failed to properly record the pounds of peanuts marketed on the producer's marketing card and such error caused an excess marketing of the producer's effective poundage quota, as defined in Part 729 of this title, or in the pounds of additional peanuts contracted in accordance with this subpart.

(c) *Precedence.* Priorities on payments to be made by handlers acquiring peanuts shall be those set forth in the regulations contained in 7 CFR Part 729 for the applicable crop of peanuts.

§ 1446.82 Transmittal of penalties.

(a) *Commercial purchases.* Form ASCS-1012 Peanuts, "Buyer's Transmittal of Claims and/or Marketing Penalty," shall be used by a handler to transmit to ASCS any marketing penalty or peanut marketing penalty lien collected directly or indirectly from a producer for lots of peanuts purchased as quota commercial or contracted additional. Each collection shall be sent to the county ASCS office which issued the marketing card. Unless otherwise approved by the Executive Vice President of CCC, the transmittal shall be made within two weeks after the end of the week in which the collection is made. A collection is deemed to have been made when any payment is made to the producer for the peanuts or when the peanuts were delivered to the handler, whichever is earlier.

(b) *Loan peanuts.* Withholdings from the loan value due a producer which represent collections of claims for marketing penalties or marketing penalty liens shall be transmitted or handled in accordance with instructions issued by the association or CCC.

§ 1446.83 Recordkeeping requirements.

(a) *Persons required to keep records.* Any person who is required under this subpart to keep any record or make any report shall keep such records for each such business as required by this subpart which bear in any way upon the obligations of this subpart whether as a:

(1) Person who dries farmers stock peanuts by artificial means for a producer, a buyer, warehouseman, processor, or common carrier of peanuts;

(2) A broker or dealer in peanuts;

(3) Any farmer engaged in the production of peanuts;

(4) An agent marketing peanuts for a producer or acquiring peanuts for a buyer or association;

(5) A person engaged in the business of cleaning, shelling; crushing, or salting peanuts or manufacturing peanuts products; or

(6) A person owning or operating a peanut-picking or peanut-threshing machine.

(b) *Marketing records.* Each handler shall keep records and make reports as required by § 1446.84 of this subpart. The handler shall maintain the records with respect to each lot of farmers stock peanuts which the handler acquires for the handler's own account.

(c) *Sales and disposal records.* Each handler shall maintain records of all sales or other disposals of peanuts. Such records shall show the date of sale or disposal, quantity, type, purchaser, whether sold as farmers stock peanuts, milled peanuts, edible peanuts or peanuts for crushing, and any other information which may be required by this subpart.

(d) *Method of keeping records.* Each handler shall maintain the records required by this subpart in a manner as determined by ASCS which will enable the association, CCC, ASCS, and other representative of the Secretary to readily reconcile the quantities, grades and qualities of all peanuts acquired and disposed or by such a handler. Records concerning the acquisition and disposal of contract additional peanuts must also be kept in a manner that allows the association, CCC, ASCS, or any other representative of the Secretary to readily determine whether there has been compliance with the provisions of this subpart.

§ 1446.84 Records and reports required of handlers.

As required by this section and in accordance with instructions issued by the Executive Vice President of CCC, each handler shall keep records and make reports as follows:

(a) *Inspected peanuts.* If the Federal-State Inspection Service inspects a lot of peanuts, the handler shall complete ASCS-1007, Inspection Certificate and Sales Memorandum, or such other form approved by CCC or ASCS and on which the following information must be entered:

(1) The name and address of the farm operator, the State and county codes for the farm and, either:

(i) The farm number of the farm on which the peanuts were produced if the peanuts are marketed by the producer; or

(ii) The handler number if the peanuts are marketed by a handler;

(2) The buying point number assigned to identify the physical location of the buying point where the peanuts were marketed;

(3) Either the name, address and handler number of the handler, or if the peanuts are accepted for loan through the association, the association name, number and address;

(4) The net weight of the peanuts;

(5) The quantity of peanuts marketed as either loan quota, loan additional, commercial quota, or contract additional;

(6) The date of purchase; and

(7) The amount of any penalty collected.

(b) *Noninspected peanuts.* A handler who purchases farmers stock peanuts which have not been inspected by the Federal-State Inspection Service shall complete an ASCS-1030 or such other form approved by CCC or ASCS for general use, for each lot of farmers stock peanuts purchased. The handler shall use ASCS-1030-P, Handler's Report of Purchases of Noninspected Peanuts or such other form approved by CCC or ASCS for general use, to transmit the ASCS-1030 or other approved form to the State ASC committee in the State in which the handler's business is located or such other location or entity approved by CCC or ASCS. The handler shall complete the ASCS-1030 or other approved form to show the following:

(1) Name and address of the seller;

(2) Name and address of the farm operator and the State and county codes and either:

(i) The farm number when the peanuts are purchased from the producer of the peanuts; or

(ii) The handler's name, address and registration number when the peanuts are purchased from another handler;

(3) Type of peanuts purchased;

(4) Date of purchase;

(5) Quantity purchased;

(6) Method of determining the weight; and

(7) Signature of the seller and the date the seller signed the ASCS-1030 or other approved form.

(c) *Resales.* Each handler who resells farmers stock peanuts shall keep records of:

(1) Name and address of the buyer, and if the peanuts are sold to a handler, the buyer's handler number;

(2) Date of the sale;

(3) Type of peanuts sold; and

(4) Pounds (net weight) of peanuts sold.

(d) *Peanuts shelled or milled for a producer.* The handler shall maintain records of peanuts shelled for a producer including the following information:

(1) Date of shelling or milling;

(2) Name and address of the producer;

(3) State and county codes and the farm number of the farm where the peanuts were produced;

(4) Quantity of peanuts (farmers stock basis) shelled or milled;

(5) Quantity of shelled or milled peanuts retained by the sheller; and

(6) Quantity returned to the producer.

(e) *Peanuts dried for a producer.* The handler shall maintain records of peanuts dried for a producer including the following information:

(1) State and county codes and the farm number of the farm where the peanuts were produced;

(2) Name and address of the producer; and

(3) Quantity dried as determined by the farmers stock basis weight after drying, and the date the drying was completed.

(f) *Peanuts from which LSKs or pods are removed for a producer.* If the LSKs or pods are removed in commercial quantities or, when removed with foreign material, are recoverable in commercial quantities, the handler shall maintain records of the peanuts from which the LSKs or pods were removed for a producer as well as records for the LSKs and pods including the following information:

(1) Date of removal;

(2) Name and address of the producer;

(3) State and county codes and the farm number of the farm where the peanuts were produced;

(4) Gross weight of: (i) Peanuts prior to removal; (ii) peanuts removed as LSKs; (iii) peanuts removed as pods; and (iv) peanuts remaining after removal of foreign material and LSKs or pods;

(5) Quantity of peanuts which the person performing the service retains in the form of pods and LSKs; and

(6) Peanuts returned to the producer as: (i) Pods; (ii) LSKs; and (iii) LSKs and pods.

(g) *Green peanuts purchased from producer.* Each buyer of green peanuts shall report purchases of such peanuts to ASCS, on Form ASCS-1011, Report of Marketings of Peanuts to Non-established Buyers, or such other form as CCC or ASCS shall designate for general use, except that small lot purchases not in commercial quantities including, but not limited to, street sales, local market sales, and grocery store sales shall not be subject to this reporting requirement. This report shall subject the buyer to a review of those purchase and sales records as required in this subpart. Any buyer of green peanuts who fails to keep records as required by this section shall be subject to penalty. Each buyer shall keep records of green peanuts purchased including the following information:

(1) Date of purchase;

(2) Name and address of producer selling green peanuts;

(3) Name and address of farm operator and farm number (including State and county codes) of the farm on which the green peanuts were produced; and

(4) Pounds of green peanuts purchased.

§ 1446.85 Examination of records and reports.

The Executive Vice President of CCC, the Deputy Administrator of ASCS, the Director of the Tobacco and Peanuts Division, or the State Executive Director, and any person authorized by any one of such persons, and any auditor or agent of the Office of Inspector General, is authorized to examine any records that such person has reason to believe are relevant to any matter pertinent to the peanut poundage quota program operated pursuant to the provisions of 7 CFR Part 729 and provisions of this subpart. Upon request, any person required by this subpart to keep records shall make available for examination such books, papers, records, accounts, correspondence, contracts, documents, and memoranda as are under such person's control.

§ 1446.86 Retention of records.

Persons required to maintain records under this subpart shall maintain all records for a period of three years following the end of the marketing year in which the peanuts were produced. Notwithstanding the preceding sentence, records relating to contract additional peanuts for which penalties or liquidated damages have been assessed, shall be retained for five years following the date the assessment was made or until the conclusion of the assessment action, whichever is later and records shall be kept for such longer periods of time as may be requested in writing by the Executive Vice President of CCC.

§ 1446.87 Information confidential.

All data requested and obtained by the Secretary in accordance with the provisions of this subpart shall be kept confidential by all employees of the U.S. Department of Agriculture and of the marketing association. Such data shall be released only at the discretion of the Executive Vice President of CCC, and then only to the extent that such release is not prohibited by law.

§ 1446.88 Penalty for failure to keep records and make reports.

Any person, who fails to make any report or keep any record as required under this subpart or who falsifies any information or any such report or record shall be subject to a penalty in accordance with § 1446.144 of this subpart.

§ 1446.89 Fraud by handler.

Any misrepresentation made or effectively made by a handler within or without the records or reports maintained in connection with this subpart shall be subject to a penalty under this subpart and such penalty shall be in addition to any other remedies available by law for such misrepresentation (including, but not limited, to criminal prosecution). In addition, the handler and any individual or other person involved with such misrepresentation including employees of the handler shall be liable to CCC for all costs which CCC incurs as a result of such misrepresentation, together with interest at the per annum rate which the Treasurer of the United States charged CCC on the date the misrepresentation was made.

§§ 1446.90—1446.92 [Reserved]

WAREHOUSE STORAGE LOANS

§ 1446.93 Commingling of quota and additional peanuts.

Quota and additional farmers stock peanuts of like crop, type, area, and segregation may be commingled in storage by a handler and exchanged on a dollar value basis to facilitate handling and marketing. Except for such peanuts purchased from CCC for domestic edible use on an ingrade, inweight basis, quota loan and additional loan peanuts must be inspected as farmers stock peanuts and accounted for on a dollar value basis less a one time adjustment for shrinkage for each crop. Such adjustment shall be equal to 4.0 percent of the dollar value of the peanuts for Virginia-type peanuts and 3.5 percent for all other types; except that, if such peanuts are graded out and accounted for prior to February 1 of the year following the year in which the peanuts were grown, the adjustment of the dollar value for shrinkage shall be 3.5 percent for Virginia-type and 3.0 percent for all other peanuts. The dollar value basis for all peanuts shall be based on the quota loan rate. The handler shall receive, store and deliver all such peanuts in accordance with good commercial practice and any instructions provided by CCC. For each lot of quota and/or additional peanuts commingled in storage, the records of the handler shall show at all times the date and place received, the name and address of the producer, the type, segregation, pounds, and dollar-value-in. The handler shall keep such other accounts and records and furnish such information and reports relating to the dollar-value-out and disposition of such peanuts as may be prescribed by the association or CCC.

§ 1446.94 Loans to marketing associations.

CCC will make warehouse storage price support loans to those associations specified in § 1446.95 of this subpart that contract with CCC to arrange for the storing and handling of farmers stock peanuts, to make price support advances to producers on such peanuts, and to use such peanuts as collateral for loans obtained from CCC. Loans on quota peanuts shall be made on the basis of the quota loan rate and loans on additional peanuts shall be made on the basis of the additional loan rate. Such loans shall be due on demand.

§ 1446.95 Area marketing associations.

Price support advances will be available through:

(a) *The GFA Peanut Association* of Camilla, Georgia, for peanuts produced in the Southeastern area consisting of Puerto Rico, the U.S. Virgin Islands, and the States of Alabama, Florida, Georgia, Mississippi and that part of South Carolina south and west of the Santee-Congaree-Broad Rivers;

(b) *The Southwestern Peanut Growers Association* of Gorman, Texas, for peanuts produced in the Southwestern area consisting of all other territories or possessions of the United States not listed in paragraph (a) or (c) of this section, and the States of Alaska, Arizona, Arkansas, California, Colorado, Hawaii, Idaho, Kansas, Louisiana, Montana, Nebraska, New Mexico, Nevada, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington and Wyoming;

(c) *The Peanut Growers Cooperative Marketing Association* of Franklin, Virginia, for peanuts produced in the Virginia-Carolina area consisting of the District of Columbia, and the States of Connecticut, Delaware, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Vermont, Virginia, West Virginia, Wisconsin and that part of South Carolina north and east of the Santee-Congaree-Broad Rivers.

§ 1446.96 Delivery for price support advances.

(a) *Where available.* Unless otherwise approved by the association or by CCC, producers must deliver farmers stock peanuts to warehouses which are located in the same marketing area where the peanuts were produced. Price support advances shall be available to eligible producers from warehousemen who have entered into peanut receiving and warehouse contracts with the association. Such contracts shall require the warehouseman to inform producers that price support advances are available and to make such advances on eligible peanuts tendered for price support as provided in paragraph (e) of this section. The contracts shall also require warehousemen to:

(1) Examine the producer's marketing card to determine price support eligibility;

(2) Make entries on the marketing card as required by Part 729 of this

title and by § 1446.80 of this subpart; and

(3) Record the quantity of quota and additional peanuts and the date of each delivery. The balance of the quota or contract additional peanuts must be shown on the marketing card after each delivery. The names and locations of participating warehouses may be obtained from the office of the appropriate association or from State or county ASCS offices.

(b) *Time.* Price support advances to eligible producers on peanuts of any crop will be available from the beginning of harvest through the following January 31 or such later date as may be established by the Executive Vice President of CCC. If the final date falls on a day which is not a normal working day for the association, then the applicable final date shall be the next workday.

(c) *Inspection.* An inspector shall determine the type and quality of each lot of farmers stock peanuts that is delivered to an association for a price support advance when such peanuts are received at a warehouse under contract with an association.

(d) *Producer agreement.* To obtain a price support advance, the producer shall authorize, in writing, the association's pledge to CCC of the producer's peanuts as collateral for a warehouse storage loan and in so doing, the producer shall relinquish any right to redeem or obtain possession of such peanuts.

(e) *Advance to the producer.* For each lot of peanuts delivered, the association shall advance to the producer or jointly to the producer and lienholder as set forth in § 1446.97(a) of this subpart, the support value of such peanuts in accordance with procedures established by CCC. However, the association shall deduct from such advances (1) Any marketing penalties; (2) any deductions as specified in § 1446.97 of this subpart; and (3) any assessments or excise taxes imposed by State law and transmit such amounts to the proper State authorities. In addition, the Southwestern Peanut Growers Association, upon the prior agreement of the producer, may deduct from such advance an amount approved by CCC to be used in financing the association's peanut related activities outside the price support program, except in no case may such amount exceed $1 per net weight ton of peanuts.

§ 1446.97 Producer indebtedness.

(a) *Prior liens.* The handler shall inquire of all producers from which the handler buys or otherwise acquires peanuts as to whether any liens exist on peanuts offered for loan and shall note the response on the Warehouse Receipt and Draft form. Any payments made on such peanuts shall be made jointly payable to the producer and any and all lienholders known to the handler.

(b) *Indebtedness to the United States.* A person shall be deemed to have notice at the time of delivery of any and all liens or indebtedness of the producer to any agency or instrumentality of the United States if notice appears on the marketing card. Such liens and indebtedness include, but are not limited to, liens for any poundage quota penalty due on prior crops, FmHA liens, farm storage facility and dryer loan payments due CCC, and indebtedness to any other agency of the United States. The handler shall collect such indebtedness from each producer, to the extent of the amount due such producer for loan collateral peanuts. Collection shall be made and remitted in accordance with § 1446.82 of this subpart and instructions issued by the association.

(c) *Precedence.* Precedence on payments in cases involving liens and penalties or any other claim shall be set forth in the regulations contained in 7 CFR Part 729 for the applicable crop of peanuts.

§ 1446.98 Eligible peanuts.

(a) *Basic eligibility.* Peanuts eligible for support shall be farmers stock peanuts from the applicable crop produced in the United States by an eligible producer. In addition, such peanuts:

(1) Must be free and clear of all liens and encumbrances, including any landlord's liens, unless acceptable waivers are obtained;

(2) Must be produced in the same marketing area in which they were delivered for price support loan, unless otherwise approved by the Executive Vice President of CCC.

(3) Must, if delivered to the association in bags in the Southwestern area, be in new or thoroughly cleaned used bags which: (i) Are made of material other than mesh or net, weighing not less than 7½ ounces nor more than 10 ounces per square yard and containing no sisal fibers; (ii) are free from holes; (iii) are finished at the top with either the selvage edge of the material, a binding, or a hem; and (iv) are uniform in size with approximately 2 bushel capacity;

(4) Must not have been produced on land owned by the Federal Government if such land is occupied without a lease permit or other right of possession; and

(5) Must have been inspected as farmers stock peanuts and have an official grade determined by an inspector.

(b) *Quota support.* In addition to the basic eligibility requirements in paragraph (a) of this section, to be eligible for quota support the peanuts:

(1) Must be Segregation 1 peanuts;

(2) Must contain not more than 10.49 percent moisture;

(3) If mechanically dried, must contain at least 6 percent moisture; and

(4) Must contain not more than 10 percent foreign material.

(5) Must contain not more that 14.49 percent LSK's.

(c) *Additional support.* In addition to the basic eligibility requirements in paragraph (a) of this section, to be eligible for support as additional peanuts, the peanuts:

(1) If nonseed peanuts, must contain not more than 10.49 percent moisture;

(2) If seed peanuts, the same maximum moisture level that applies to nonseed peanuts shall apply; except that, such peanuts may have a moisture level of up to 11.49 percent moisture for nonstacked Virginia-type peanuts, provided that in either case:

(i) The seed peanuts were produced under the auspices of a State agency which controls the production of seed peanuts, and

(ii) The handler has agreed to purchase such peanuts for domestic seed use in accordance with instructions issued by CCC and with the provisions of § 1446.113 of this subpart; and

(3) Must not contain more than 10 percent foreign material, unless the handler agrees to purchase such peanuts for domestic edible use as provided in § 1446.113 of this subpart and store the peanuts separately from other peanuts until milled.

(d) *Additional support for peanuts with excess moisture, foreign material, or LSK's.* Peanuts which are graded as Segregation 2 or 3 and which, because they contain more than 10.49 percent moisture, and/or 10 percent foreign material, and/or 14.49 percent LSK's, would otherwise not be considered acceptable for loans under the provisions of (b) and (c) of this section shall nonetheless be considered eligible for loans, provided that all other conditions of this section are met, and that:

(1) The level of moisture does not exceed a level determined to be acceptable by the association; and

(2) The local crushing market for peanuts is such that the peanuts can be crushed within a reasonable time, as determined by the association; and

(3) The producer had made a bona fide effort, as determined by the association, to clean and dry such peanuts prior to offering such peanuts for loan.

(e) *Ownership requirement.* Notwithstanding any other requirement of this section, the beneficial interest in all peanuts of all segregations tendered for either quota or additional support must be in the producer who delivers them to the association and must always have been either in such producer or in the prior producer whom such producer succeeded before the peanuts were harvested. In order to meet this requirement of ownership, the succession of rights, responsibilities and interests of the former producer with respect to the farm on which the peanuts were produced must have been substantially assumed by the person claiming succession.

[51 FR 44764, Dec. 12, 1986, as amended at 53 FR 35986, Sept. 15, 1989]

§ 1446.99 Eligible producer.

(a) *Requirements.* An eligible producer for purposes of price support under this subpart shall be an individual, partnership, association, corporation, estate, trust, a State, a political subdivision of a State, any State agency, or other legal entity that produces peanuts as landowner, landlord, tenant, or sharecropper on a farm except as set out in this section. No person shall be eligible for a price support loan and related benefits under this part to the extent that the person is ineligible for such loans or benefits under:

(1) The provisions of 7 CFR Part 1498 relating to the eligibility of foreign persons for such loans or benefits with respect to the 1989 and 1990 crops of peanuts; or

(2) any other provision of law.

(b) *Program ineligibility.* (1) Any person who produces any agricultural commodity on a field classified by the Soil Conservation Service as highly erodible land or as converted wetland shall be ineligible for price support. Any additional peanuts which are subject to this paragraph for which there is not an approved contract for sale of the peanuts to a handler, shall be disposed of in accordance with instructions of the association. Guidelines shall be supplied to the associations by the Executive Vice President, CCC. Such peanuts shall not be eligible for any price support payment and any such payment received shall be re-paid to the CCC with interest running from the date of the payment to the producer. Interest on such repayments shall be at the rate charged to the CCC by Treasury for borrowings by CCC during the relevant period unless otherwise specified by the Executive Vice President of CCC.

(2) A producer on a farm for which the farm operator fails to file, or does not file in a timely manner, a report of crop or land use acreage as required by Part 718 of this title shall not be eligible for price support at the quota loan rate unless the late-filed report was accepted by the county ASC committee to the extent permitted by Part 718 of this subpart. In addition, no producer shall be eligible for price support at the quota loan rate if the producer has filed an erroneous report of crop or land use acreage unless:

(i) The determined acreage does not differ from the reported acreage by more than the tolerance established by Part 718 of this title, or

(ii) The county ASC committee determines that the producer acted in good faith in reporting the crop or land use acreage.

(c) *Estates and trusts.* A receiver or trustee of an insolvent or bankrupt debtor's estate, an executor or administrator of a deceased person's estate, a guardian of an estate or of a ward or incompetent person, and trustees of a trust estate shall be considered to represent the insolvent debtor, the deceased person, the ward or incompetent, and the beneficiaries of a trust, respectively, and the peanut production of the receiver, executor, administrator, guardian, or trustees attributable to the person represented shall be considered to be the production of the person represented. Loan documents executed by any such person shall be accepted by CCC only if they are valid and such person has the authority to sign the applicable documents.

(d) *Eligibility of minors.* A minor who is otherwise an eligible producer shall be eligible for price support only if such minor meets one of the following requirements:

(1) The right of majority has been conferred on such minor by court proceedings or by statute; or

(2) A guardian has been appointed to manage such minor's property and the applicable price support documents are signed by the guardian; or

(3) A bond is furnished under which a surety acceptable to CCC guarantees to protect CCC from any loss for which the minor would be liable had such minor been an adult.

[51 FR 44764, Dec. 12, 1986, as amended at **53 FR 35986, Sept. 15, 1989**]

§ 1446.100 Peanuts ineligible for loan program.

Any person who causes or permits peanuts other than those eligible for loan under § 1446.98 of this subpart to be placed in the loan program shall be deemed to have agreed that:

(a) CCC may incur serious and substantial damage to its program to support the price of quota peanuts if such peanuts are placed under loans;

(b) That the amount of such damages will be difficult, if not impossible, to ascertain exactly; and

(c) That the handler shall, with respect to any ineligible peanuts placed under loan, pay to CCC, as liquidated damages and in addition to any penalty that is due, the difference between the average loan rate for the type of peanuts placed under loan and the market price as determined by CCC for such type for crushing, times the amount of peanuts placed under loan. It is agreed that such liquidated damages are a reasonable estimate of the probable actual damages which CCC would suffer. Such person shall pay the damages to CCC promptly upon demand in addition to penalties as may be due or assessed. Liquidated damages under this subsection may be reduced by the Executive Vice President of CCC, based upon consideration of the following factors:

(1) Whether the person causing or permitting ineligible peanuts to be placed in the loan program made a good faith effort to ensure that ineligible peanuts were not pledged as loan collateral;

(2) The degree of damage or potential damage to the price support program caused by the violation;

(3) The nature and circumstances of the violation;

(4) The extent of the violation; and

(5) Any other pertinent information.

§ 1446.101 Pools and determination of net gains.

(a) *Pools.* The association shall establish separate pools by area and segregation of peanuts and shall maintain separate, complete and accurate records for quota peanuts under loan and for additional peanuts under loan; provided further that separate pools shall be established for bright hull and dark hull Valencia peanuts produced in New Mexico.

(b) *Net gains for quota pools.* Net gains from peanuts in each quota pool shall consist of:

(1) The net gains which are in excess of the loan indebtedness on quota peanuts and other costs or losses which are incurred on peanuts placed in such pool; plus

(2) An amount from the applicable pool for additional peanuts to the extent of the net gains on peanuts sold from such additional peanut pool for domestic food and related uses equal to any loss incurred in disposing of any peanuts in the pool for quota peanuts.

(c) *Net gains for additional pool.* Net gains for peanuts in each additional pool shall consist of:

(1) The net gains which are in excess of the loan indebtedness and other costs or losses which are incurred by CCC on peanuts placed in the pool; less

(2) Any amount as provided in paragraph (b)(2) of this section allocated to offset any loss on the pool for quota peanuts.

§ 1446.102 Distribution of net gains.

(a) *Pool distribution.* (1) Net gains as determined in accordance with § 1446.101 of this subpart on peanuts in each area pool shall be distributed to producers subject to the additional offsets set forth in paragraphs (b), (c) and (d) of this section and the other conditions set forth in this section;

(2) Distributions shall be made only to producers placing peanuts in the pool and shall not be assigned to any other party; and

(3) Any proceeds shall be distributed to each producer in proportion to the value of peanuts placed in the pool by that producer, except that the proceeds available for the amount of distribution shall be subject to the offsets set forth in paragraphs (b), (c), (d) and (e) of this section.

(b) *Pool offsets within marketing areas.* Distribution of net gains in any additional pool other than those for Valencia peanuts produced in New Mexico shall first be reduced to the extent of any loss by CCC on the corresponding pool for Segregation 1 quota peanuts. For purposes of this paragraph, offsets for losses on quota peanuts shall be prorated from each of the pools for additional peanuts which have net gains.

(c) *Offsets for certain pool transfers.* Proceeds due any producer from any profit pool shall be reduced further to the extent of any loss that is incurred with respect to peanuts such producer has transferred from any additional loan pool to a quota loan for pricing purposes pursuant to the provisions of § 1446.103 of this subpart.

(d) *Pool offsets between marketing areas.* Proceeds due any producer after reductions made under paragraphs (b) and (c) of this section shall be reduced further to the extent of any losses in a pool for Segregation 1 quota peanuts in any other marketing area; except that, gains from pools for Valencia bright hull and Valencia dark hull peanuts produced in New Mexico shall not be used to offset losses in any pools in other areas.

(e) *Priority of offsets between areas.* Insofar as practicable,

(1) Losses offset in paragraph (d) of this section shall be recovered from the gains in other area pools for additional peanuts; except that, if the total losses are less than the total gains, the offset shall be prorated between those pools for Segregation 1, 2, and 3 additional peanuts which have gains;

(2) Any losses remaining after satisfying offsets under paragraph (e)(1) of this section shall be recovered from any gains in other area pools for Segregation 1 quota peanuts; except that, if the remaining losses are less than the total gains in pools for Segregation 1 quota peanuts, the offset shall be prorated between those area pools for Segregation 1 quota pools which have gains.

[51 FR 44764, Dec. 12, 1986, as amended at 53 FR 35986, Sept. 15, 1988]

§ 1446.103 Producer transfer of additional loan peanuts to quota loan.

(a) Except as provided in paragraph (b) of this section, producers may transfer Segregation 2 and Segregation 3 additional loan collateral peanuts to the quota loan pool after the producer has completed marketing and returned his marketing card to the county office. Such transfer may not exceed the smaller of the effective farm poundage quota minus the production of Segregation 1 peanuts on the farm, or the undermarketing of quota peanuts shown on the farm marketing card. As provided in this subpart, pool proceeds due such producer from peanuts in any other pool shall be reduced by the amount of any losses to CCC on the peanuts so transferred. The support values for any Segregation 2 peanuts so transferred shall be the support value for quota peanuts minus the damage discount published in the quota support schedule, and the support value for Segregation 3 peanuts shall be the support value for quota peanuts minus the applicable discount published in the quota support schedule. Producers who are eligible to transfer additional loan peanuts to the quota loan pool in accordance with the provisions of this section may apply for such transfers with the county office. The county office shall determine the quantity of undermarketings of quota peanuts and the quantity of additional peanuts which are eligible for transfer. The producer must indicate to the county office the net weight and applicable ASCS-1007 serial numbers for the peanuts to be transferred. Such pounds shall be considered as marketings of quota peanuts, and applicable ASCS-1007 shall be appropriately adjusted and the producer will be advanced the appropriate difference between the additional and quota support rates.

(b) Transfer of Segregation 2 and Segregation 3 additional loan collateral peanuts to a quota loan pool shall not be permitted under the provision of paragraph (a) of this section for a farm with respect to that quantity of peanuts for which the producers on the farm have executed a waiver of the right to make such a transfer in order to obtain indemnity benefits from the Federal Crop Insurance Corporation or has agreed to such a waiver with any other Federal agency.

§ 1446.104 [Reserved]

CONTRACT ADDITIONAL PEANUTS

§ 1446.105 Approval as handler of contract additional peanuts.

(a) *Requirements of approval.* Any person who plans to acquire contract additional peanuts from any source must register and be approved as a handler of additional peanuts under the requirements of this subpart by July 31 for each crop, unless an alternative date is approved by the Executive Vice President of CCC. Consideration for approval will be made for each crop.

(b) *Evidence of adequate facilities.* Any person who plans to buy or otherwise acquire additional peanuts for processing, export or sale must, by July 31, provide written evidence which shows that the person owns adequate facilities, or has a lease or sublease which provides for use and control by the person holding the lease or.sublease of adequate facilities, necessary to receive, grade, store and otherwise handle and dispose of additional peanuts in accordance with the provisions of this subpart and in accordance with procedures issued by CCC. Facilities include, but are not limited to, peanut inspection facilities, receiving and storage facilities, loading and unloading facilities, conveyer-type handling equipment, drying equipment, truck scales, and commercial-type shelling equipment, excluding handheld or other types of seed shellers or bar shellers with a shelling capacity of less than 50 tons per day. Before the association approves the handlers to contract for additional peanuts, representatives of the association or the CCC may inspect or othewise verify that the facilities are adequate to receive and handle peanuts.

(c) *Evidence of adequate assets.* Any person who plans to buy or otherwise acquire additional peanuts must submit a financial statement to CCC in accordance with instructions issued by CCC. Such financial statement shall show to the satisfaction of CCC that the person has adequate assets to ensure the person's compliance with the obligation to export additional peanuts in accordance with the provisions of this subpart.

(d) *Substituting other facilities.* Unless the Executive Vice President of CCC shall otherwise agree in writing, once approved as having adequate facilities a handler may not substitute or otherwise use facilities other than those on which the approval was based except that substituted facilities may be approved by the association in accordance with paragraph (b) of this section and in accordance with instructions issued by CCC if the handler can show that the original facilities are no longer available for use due to circumstances beyond the handler's control such as, but not limited to, fire, flood, wind damage, or mechanical failure.

[51 FR 44764, Dec. 12, 1986; 51 FR 45837, Dec. 22, 1986]

§ 1446.106 Letter of credit.

(a) *Financial guarantee (letter of credit).* For each marketing area in which a handler contracts or otherwise plans to acquire contract additional peanuts, the handler must present an irrevocable letter of credit to the marketing association used by CCC to make price support advances in that marketing area. Unless the Executive Vice President of CCC shall otherwise agree in writing, a separate letter of credit is required for each marketing area and must represent the amount contracted from within each area. Such letter of credit shall be issued in a form and by a bank which is acceptable to CCC and shall be submitted to the relevant association not later than August 10 (or the next business day if August 10 is not a business day) following the final date for submitting contracts before contracts between the handler and producer will be approved and before producers will be issued marketing cards for contract additional peanuts. Unless the provisions of paragraph (b), (c) or (e) of this section are applicable, the amount of the letter of credit for each area shall be equal to the amount determined by multiplying the difference between the national average basic quota support rate and the national average basic additional support rate for all peanuts types, times:

(1) For handlers selecting nonphysical supervision, an amount not less than 15 percent of the total quantity of additional peanuts shown on contracts submitted for approval by the handler in that marketing area; or

(2) For handlers selecting physical supervision, an amount not less than 10 percent of the quantity of addition-

eanuts shown on contracts submit-
for approval by the handler in
t marketing area.
) *Increased letter of credit based on*
formance record. For the 1988
ough 1990 crop years, the amount
he letters of credit required to be
mitted under paragraph (a) of this
ion by any handler who has a poor
formance record, as evidenced by
vious penalty assessment for viola-
s of the provisions of this part, or
is associated with another han-
who has such a record, shall be in-
sed to an amount CCC determines
essary to assure compliance with
part, such amount of increase to
letermined in accordance with the
lelines set forth in paragraph (c) of
section.
) *Guidelines for increasing letters*
redit. (1) With respect to the estab-
ment of letters of credit for each
he 1988 through 1990 crop years, if
handler and/or related entity was
ssed penalties for program viola-
s for any of the previous three
years, the percentage of the
nds of contracted peanuts to which
support differential specified in
graph (a) of this section shall be
lied, shall be increased by 10 per-
for each and every year of the
e-year period in which such a pen-
was assessed, except that:
The increase in the percentage of
racted peanuts to which the sup-
differential is applied which is at-
utable to violations for a particular
year shall be 5 percent rather
10 percent if, for all violations
hat crop year:
) The penalties were reduced by
Executive Vice President, CCC,
paid; or
) Less than 120 days, or such fur-
period as established by the Exec-
e Vice President, have passed since
penalty assessment was made by
CCC Contracting Officer.
) Previous penalty assessments
h have been paid shall not be con-
red as part of the violation history
ny crop year if:
) The violations do not involve the
rtation of additional peanuts, or
failure to properly dispose of addi-
al peanuts; and

(B) The total violations for any crop year by the handler, and related individuals or entities, involved less than 100,000 pounds of peanuts.

(iii) If there are penalties assessed against the handler and/or related individual or entity, as determined by the Executive Vice President, CCC, for any crop year for any violation of this part of any kind (including, but not limited to those identified in paragraph (c)(1)(ii) of this section) which remain unpaid more than 120 days after the assessment was made by the CCC Contracting Officer, the amount of the letter of credit otherwise required by this paragraph for any of the 1988 and subsequent crops shall be increased by the amount of the unpaid assessment.

(2) References to unpaid penalties in paragraph (c)(1) of this section shall include associated unpaid interest and unpaid late payment charges.

(3) Letter of credit determinations under this section for the 1988 and subsequent crop years shall be made based upon the facts as they exist on June 1 of the calendar year in which the letter of credit is to be supplied. However, the Executive Vice President, CCC, in his discretion, may waive the increase required under paragraph (c)(1)(iii) of this section upon the presentment of adequate security as determined acceptable by the Executive Vice President, CCC. Further, notwithstanding any other provision of this section, the Executive Vice President, CCC, may extent the time for filing of the required letter of credit if such an extension is deemed needed to allow handlers sufficient time to acquire the necessary financing.

(d) *Contract approval.* Contracts for additional peanuts for crushing or export between a handler and producers shall not be approved by the county ASC committee until each handler:

(1) Has submitted a letter of credit in accordance with this subpart and with any instructions issued by the Executive Vice President of CCC to cover the amount of peanuts shown on contracts submitted for approval; and,

(2) Has been determined by the association, in accordance with instruc-

tions issued by CCC, to have adequate facilities and assets as provided in this subpart.

(e) *Adjusting the letter of credit prior to contract approval.* The association will notify handlers who have not submitted an adequate letter of credit in accordance with the provisions of this subpart and will indicate the amount of shortage. Unless otherwise permitted by the Executive Vice President of CCC, handlers will have 15 days from the date of notification to amend the letter of credit or in the alternative to operate under physical supervision with an appropriate letter of credit. If the handler has selected nonphysical supervision but does not adjust the letter of credit to the amount required for nonphysical supervision within 15 days, all additional peanuts acquired by the handler must be handled and disposed of by such handler in accordance with the requirements of this subpart applicable to physical supervision: except that, if the handler's letter of credit is insufficient for physical supervision, all contracts entered into by such handler will be disapproved and the producers with whom the contracts were made will be permitted to transfer such contracts to other handlers in accordance with § 1446.110(a)(2) of this subpart.

[51 FR 44764, Dec. 12, 1986, as amended at 53 FR 28998, Aug. 2, 1988; 53 FR 35986, Sept. 15, 1988]

§ 1446.107 Contracts for additional peanuts for crushing or export.

(a) *Submitting contracts for approval.* Handlers who have a U.S. address, and who are approved to handle contract additional peanuts, and who have submitted a letter of credit in accordance with § 1446.106 of this subpart may contract with producers to buy additional peanuts for crushing or exportation, or both. Persons who do not meet those requirements shall be ineligible to contract for additional peanuts with producers. However, notwithstanding the preceding sentence, producers approved as producer-handlers under Part 1421 of this title for the purpose of "immediate buyback" of their additional peanuts may not contract with themselves. All contracts for sales of additional peanuts shall be completed and submitted to the county office of the county in which the farm is administratively located for approval on or before July 31 of the year in which the crop is produced; except that, should July 31 fall on a Saturday or Sunday, or other nonwork day the contract must be submitted for approval no later than the last workday immediately preceding the final contracting date. Such contracts cannot be sold, traded or assigned, except under the terms and conditions specified in § 1446.110 of this subpart. In order to be approved by the county committee, the following information must appear on the contract:

(1) The name and address of the operator;

(2) The name and address of each producer sharing in the proceeds of the contract additional peanuts;

(3) The State and County code of the State and County in which the additional peanuts are to be produced;

(4) The farm serial number of the farm on which the peanuts are produced;

(5) The name, address, and registration number of the handler;

(6) The amount of Segregation 1, Segregation 2, or Segregation 3 peanuts stated in pounds;

(7) The final contract price as defined in accordance with § 1446.108 of this subpart to be paid by the handler shown as a set percentage of the loan rate for quota peanuts;

(8) A disclosure by the producer of any liens or encumbrances on the peanuts;

(9) The signature of the farm operator;

(10) The signature of each producer sharing an interest in the proceeds of the contract additional peanuts on the farm;

(11) The signature of the handler or the authorized agent of the handler;

(12) A prohibition against changing the price;

(13) The following statement by the handler regarding compliance with regulations:

"I agree that I will export, crush, or otherwise dispose of the peanuts delivered under this contract as provided in 7 CFR Part

1446, Subpart—Peanut Warehouse Storage Loans and Handler Operations for the 1986 through 1990 Crops.";

and

(14) The following statement regarding immediate buyback sales:

> "The parties to this contract agree that additional peanuts may not be purchased for domestic use under the 'immediate buyback' provisions of the regulations found under 7 CFR Part 1446 until all of the contract additional peanuts that were contracted from the farm number shown on this contract have been delivered as determined by the County ASC Committee."

(b) *1986 Contract approval.* Notwithstanding the preceding provisions and for the 1986 crop only, the county committee may, in accordance with instructions of the Executive Vice President of CCC, approve a contract submitted by July 31, 1986, if the contract conforms to the requirements for the 1985 crop, provided, that the contract contain a final price and a prohibition against the disposition of contract additional peanuts for domestic edible or seed use, and provided further, that if it is determined that the contract does not contain sufficient specificity regarding the prohibition against the use of the peanuts for immediate buyback, an addendum may be filed to correct that deficiency. The addendum must be filed with the county office by September 1, 1986, and, unless the Executive Vice President agrees otherwise, the addendum may only address the prohibition against the use of the peanuts for immediate buyback.

§ 1446.108 Final contract price.

In order for a contract to be approved by the county committee, the contract price shall be:

(a) Expressed in such a manner that a third party may determine that the actual price of the peanuts without a need for additional negotiations; and

(b) Set at a level that is not lower than the additional loan rate for the type peanuts involved in the sale.

§ 1446.109 Adjusting the letter of credit.

(a) *Adjusting the letter of credit to reflect TKC obligation on final delivery.* Except for increasing the letter of credit in accordance with § 1446.111 of this subpart for transfers of farmers stock peanuts, and except for any adjustment in the initial amount of the letter of credit required by § 1446.106 (d) and (e) of this subpart, the letter of credit may not be adjusted otherwise until January 31 of the calendar year following the year in which the peanuts were produced. Such adjustment shall reflect the final TKC export obligation for the farmers stock peanuts delivered to the handler.

(b) *Adjusting the letter of credit for acceptance proof of disposition.* The handler shall deliver to the association satisfactory evidence as described in § 1446.123 of this subpart, to verify that contract additional peanuts have been exported or otherwise disposed of in accordance with the provisions of this subpart. On January 31, of the calendar year following the year in which the peanuts were produced, and on March 31, May 31, and monthly thereafter, the association may reduce the letter of credit by an amount representing the quantity of peanuts for which acceptable proof of proper disposition has been presented to the extent that any potential marketing penalty on the remaining obligation is covered by a letter of credit.

(c) *Drawing against the letter of credit.* Evidence of export and disposition as described in § 1446.123 of this subpart, must be submitted no later than 30 days after the final date for export as established in § 1446.120 of this subpart, or 15 days prior to the expiration of the letter of credit, whichever occurs first. If satisfactory evidence is not presented by such date, CCC may authorize the association to draw against the letter of credit and apply the amount toward any penalty due for failure to properly dispose of or account for contract additional peanuts in accordance with this subpart. Any reduction in a letter of credit shall not compromise any penalty due CCC if the letter of credit is insufficient to cover the full amount of the penalty or prevent any redetermination of whether there has been a proper disposition and/or accounting for peanuts.

(d) *Special 1986 crop provisions.* Notwithstanding any other provisions of this section and for the 1986 crop only, the letter of credit required by this section may be filed after July 31, 1986, provided that the letter of credit is filed by August 31, 1986, or such other date that may be established by the Executive Vice President of CCC. In addition, for the 1986 crop only, the other requirements of this section which apply to letters of credit under this subpart may be waived by the Executive Vice President, to the extent determined necessary to facilitate the marketing of the 1986 crop.

§ 1446.110 Transfer of contracts prior to delivery.

(a) *Contract transfers and delivery of contracted peanuts to other handlers.* (1) If a handler is otherwise unable to perform under any contract with a producer for the purchase of additional peanuts due to conditions beyond the handler's control, the handler and the producer may agree to the delivery of the peanuts to other handlers under the terms of the original contract or under modified terms except that, the price, quantity, type, segregation or farm number as shown on the original contract may not be changed. Conditions deemed beyond the handler's control may include but are not limited to insolvency, bankruptcy, death, or destruction of warehouse facilities.

(2) If a handler does not amend the initial letter of credit within the 15 day period set by this subpart to the minimum amount required for physical supervision as set forth in § 1446.106 of this subpart, the county ASCS offices, in accordance with instructions issued by ASCS, shall notify producers that all contracts with such handler will not be approved by the county ASC committee and the producers may be given the opportunity to transfer their contracts to another handler under the terms of the original contract or under modified terms except that the price, quantity, type, segregation or farm number as shown on the original contract may not be changed.

(3) Before a transfer of a contract for additional peanuts to another handler as permitted by this section may be approved, the handler assuming the contract must amend the letter of credit to cover the total amount contracted and the amount transferred. Such transfers shall not be valid without the prior written approval of the Deputy Administrator, State and County Operations, ASCS. A transfer shall be approved by the Deputy Administrator only if it is determined by the Deputy Administrator that such transfer will not impair the effective operation of the peanut program.

(b) *Contract transfers and transfer of delivery obligations to other producers.* If a producer is unable to fully perform the terms of a contract with a handler for the purchase of additional peanuts due to conditions beyond the producer's control or other conditions as may be prescribed by CCC, the handler and the producer or his successor-in-interest may agree to a modification of the contract or to the substitution of another producer either under the original terms of the contract or modified terms that do not change the original contract price and quantity. Conditions deemed to be beyond the producer's control may include but are not limited to farm reconstitutions (combinations and divisions), insolvency, bankruptcy or death. Such modifications or transfers of contract obligations shall not be valid without the prior written approval of the Deputy Administrator, State and County Operations, ASCS. A transfer shall be approved by the Deputy Administrator only if it is determined by the Deputy Administrator that such modifications or transfers will not impair the effective operation of the peanut program. Contract modifications other than changes in producer, owner or operator, or changes prohibited by this section may be approved by the county ASCS office in accordance with instructions issued by ASCS.

§ 1446.111 Transfer of contract additional peanuts between handlers.

(a) *Liability and credit for export or crushing.* Except as permitted by this section, handlers may not:

(1) Sell, assign or otherwise transfer liability for exporting or crushing contract additional peanuts to other handlers, or

(2) Sell, assign, or otherwise transfer credits for exporting or crushing contract additional peanuts to other handlers.

(b) *Transfer of farmers stock contract additional peanuts.* A one-time transfer of farmers stock peanuts may be made between the entity shown as applicant 1 and the entity shown as applicant 2 on the ASCS-1007 for the peanuts. Such transfers shall be made within the same marketing area unless approved otherwise by the association or the Deputy Administrator, State and County Operations, ASCS, and in accordance with instructions issued by CCC. Before the transfer may be approved, the receiving handler's letter of credit shall be amended by an amount that will cover the amount of peanuts transferred and the transferring handler must submit to the association for approval an application for transfer, CCC-1006, covering any proposed transfer of farmers stock peanuts. Such approval must be obtained before any physical movement of the peanuts from the buying point. No other transfer of peanuts as farmers stock peanuts after sale by the producer shall be permitted unless approved in writing by the CCC or the area association.

(c) *Peanuts for processing into products.* Handlers may transfer contract additional peanuts and the liability for the export of contract additional peanuts to a processor of peanut products. Such transfer shall be made in accordance with the provisions of § 1446.116 of this subpart.

(d) *Transfer of export credit for peanuts which have been exported.* Credit for peanuts exported under the provisions of this subpart will be given to the applicant shown on the FV-184/ Peanuts, Inspection Certificate (Peanuts), for the lot of peanuts that has been exported: Except that:

(1) If a bill of sale and a disclaimer to the credit for export is submitted with the applicable FV-184, the credit, may be claimed by the person to whom the peanuts were sold.

(2) If documentation of export for a lot of peanuts other than the one purchased for export is submitted, credit may be given only if the FV-184 and sales contract for the original lot is included with the documentation for the lot subsequently exported.

(3) In addition to the other documentation required by this subpart, handlers operating under physical supervision must submit the applicable CCC-1006 for the lot of peanuts sold and for the lot of peanuts exported, if different from the lot sold.

§ 1446.112 Inspection of contract additional peanuts.

The type and quality of each lot of contract additional peanuts delivered under contract shall be determined by the Federal-State Inspection Service when such peanuts are delivered by a producer. The inspection shall include determinations of:

(a) The total kernel content export obligation as well as the amount of sound mature kernels and sound split kernels in each lot in accordance with instructions issued by CCC; and

(b) The per pound value of the peanut kernels in each lot.

§ 1446.113 Purchase of additional peanuts for domestic edible use.

(a) *"Immediate buyback" purchase.* Except as provided in paragraph (b) of this section or as the Executive Vice President of CCC shall direct, a handler shall have the right to purchase additional peanuts during harvest season from the association for domestic edible use at buying points owned or controlled by such handler at prices equal to 100 percent of the quota loan value of such peanuts plus a charge to cover all costs incurred with respect to such peanuts for inspection, warehousing, shrinkage, and other expenses. Such "immediate buyback" purchases as are described in the preceding sentence may be made only from the association to which and only on the date on which the peanuts were delivered by the producer as collateral for a price support loan. The "immediate buyback" purchase shall be valid and accepted by the association only if the marketing card (ASCS-1002) is stamped or otherwise designated "eligible for buyback." The handler shall:

(1) Act for the association by advancing to the producer price support

from CCC funds for the peanuts at the additional loan rate;

(2) Pay his own funds to the producer for any agreed premiums for the delivery of such peanuts by the producer to the handler; and

(3) Forward to the association a check payable to CCC from his own funds for the peanuts in an amount equal to the quota loan value of the peanuts as well as any handling charges. The check and applicable ASCS-1007 record will identify the peanuts as additional peanuts that may be used for domestic edible use and those documents must be transmitted to the association (as evidenced by a postmark) unless CCC otherwise approves, not later than the third workday (excluding Saturdays, Sundays, and Federal holidays) following the day the peanuts were inspected. Subject to offsets, such receipts will be credited to the additional loan pool for such peanuts.

(b) *Prohibition of "immediate buyback" sales.* (1) Notwithstanding the provisions of paragraph (a) of this section, additional peanuts may not be purchased from a farm under the "immediate buyback" provisions of this section until all of the peanuts contracted for export or crushing on such farm have been delivered. A producer's marketing card will not be stamped or otherwise designated eligible for immediate buyback until the producer for the farm number as shown on the contract has delivered the total amount contracted on such farm and the producer's marketing card shows a zero balance for contract additional peanuts;

(2) Under procedures issued by CCC and notwithstanding paragraph (b)(1) of this section, immediate buybacks otherwise prohibited in (b)(1) may be permitted by CCC in cases where there is more than one producer on a farm provided, that such producer has not shared in the additional peanuts for which there is a contract and did not otherwise participate in such contract as determined by the association. If additional peanuts are purchased under this section before the marketing card is stamped or otherwise designated eligible for immediate buyback the producer and handler shall be jointly and severally liable for a penalty to be assessed in accordance with § 1446.144 of this subpart for using additional peanuts in the domestic market or under any other provisions of that section that may apply.

(3) The balance shown on the marketing card for contract additional peanuts shall determine the eligibility for immediate buyback. Agreements between handlers and producers to void the contract submitted to the Secretary for approval shall not reduce the balance shown on the producer's marketing card for contract additional peanuts.

(c) *Purchase of quota and additional peanuts subsequent to delivery.* After delivery by producers to the association and under terms and conditions established by the association and CCC, handlers may purchase for domestic edible use quota or additional peanuts from the loan pool. The minimum price for such purchases shall be the applicable carrying charges plus:

(1) Not less than 105 percent of the quota loan rate adjusted for quality of the peanuts if paid for not later than December 31 of the marketing year; or

(2) Not less than 107 percent of the quota rate adjusted for quality value if paid for after December 31 of the marketing year.

§ 1446.114 Recordkeeping requirements for contract additional peanuts.

All contract additional peanuts acquired by a handler shall be disposed of by domestic crushing or exportation to an eligible country in accordance with the conditions set forth in this subpart. Handlers shall ensure that any additional peanuts exported are evidenced by appropriate documentation as required by § 1446.123 of this subpart. All handler's records shall be subject to a review by the association, CCC, ASCS, or other representatives of the Secretary of Agriculture to determine compliance with the provisions of this subpart. Refusal to make such handler's records available to the association, CCC, ASCS, or other representative of the Secretary or the failure of such records to establish such disposition by the handler shall constitute prima facie evidence of noncompliance with this subpart for which a penalty may be assessed against the handler in accordance with § 1446.144 of this subpart. Reviews of handler records shall be made by the association in accordance with guidelines established by CCC.

§ 1446.115 Excess marketing of quota peanuts.

A handler will be subject to a penalty for noncompliance if it is determined by CCC that the handler marketed from any crop, for domestic edible use, a larger quantity, or higher grade or quality of peanuts, than could reasonably be produced from the quantity of peanuts having the grade, kernel content, and quality of quota farmers stock peanuts purchased by the handler during the applicable marketing year and those purchased for domestic edible use in accordance with the provisions of § 1446.113 of this subpart, regardless of whether additional peanuts were acquired by the handler. In such case, the handler will be obligated to pay a penalty equal to 140 percent of the basic quota support rate with respect to that quantity of farmers stock peanuts which are determined by CCC to be necessary to produce the excess quantity or grade or quality of peanuts sold, except that such penalty may be reduced in appropriate circumstances under the terms set forth in §1446.145 of this subpart, which also prescribes the manner in which penalties will be assessed.

§ 1446.116 Processing additional peanuts into products.

(a) *Application for purchase of additional peanuts.* Processors of peanut products may apply to handle additional peanuts without physical supervision provided the processor:

(1) Agrees in writing to export additional peanuts in such quantities and in accordance with such procedures as are specified by this subpart;

(2) Provides the association with a letter of credit, in accordance with instructions issued by the Executive Vice President of CCC, in an amount equal to 140 percent of the national average quota support rate announced by the Secretary, times the quantity of peanuts shown on the applicable CCC-1006's; and

(3) Provides the association a description of the type of product that will be processed, the type of containers, size of containers, and the standard peanut processing yield for the product. Such application shall be made to the area marketing association. Upon verification of product yield by the association, approval of the transfer and approval of the letter of credit, a product export obligation will be established on association ledgers and the processor notified of the quantity of product export obligation.

(b) *Proof of export.* The processor shall submit to the association proof of export of like kind, as determined by the association, as that required for exports of peanuts under nonphysical supervision by this subpart. Upon receipt of acceptable documentation the association may reduce the letter of credit in accordance with this subpart and instructions issued by ASCS.

(c) *Applicability of regulations.* By agreeing to the provisions of this section, a processor is deemed to have agreed that the provisions of this subpart such as access to facilities, fraud, liens against peanuts on which penalty is due, and any other provisions that apply to a handler of additional peanuts shall apply to the processor and the processor shall be considered a handler for purposes of applying the penalty provisions of this subpart.

(d) *Physical supervision.* The processor may choose physical supervision in lieu of nonphysical supervision. If physical supervision is chosen, such supervision shall be conducted in accordance with instructions of the Executive Vice President, CCC, and the processor shall be required to present a letter of credit as prescribed by the Executive Vice President, CCC, which shall, to the extent practicable, be the same amount as the letter of credit that would be required for an equal quantity of peanuts under § 1446.106 for a handler who has entered into contracts for the purchase of additional peanuts and has chosen physical supervision.

[51 FR 44764, Dec. 12, 1986, as amended at 53 FR 35986, Sept. 15, 1989]

§ 1446.117 Marketing peanut products made from contract additional peanuts.

A handler will be subject to a penalty for noncompliance if it is determined by CCC that the handler marketed in the United States, including its territories and possessions and the District of Columbia, Canada, or Mexico any peanut products made from any crop of contract additional peanuts. In such case, the handler will be obligated to pay a penalty equal to 140 percent of the basic quota support rate with respect to that quantity of farmers stock peanuts which are determined by CCC to be necessary to produce the quantity of peanut products sold, irrespective of whether the products were produced domestically or outside the United States. Such peanuts shall be considered as not exported. Further, except for buyback or other purchases of loan peanuts for which use for domestic edible use is explicitly permitted by this subpart the marketing of any additional peanuts for domestic edible use shall be subject to a penalty at 140 percent of the quota support rate, irrespective of whether the peanuts have been previously exported and then reentered.

§ 1446.118 Storage requirements for contract additional peanuts prior to processing.

(a) *Commingled storage.* Handlers may commingle quota loan, quota commercial, additional loan, and contract additional peanuts. Contract additional peanuts, must be inspected on a farmers stock basis and accounted for on a dollar-value basis less a one time adjustment for shrinkage for each crop as permitted by § 1446.130(b) for physical supervision and § 1446.138 for nonphysical supervision.

(b) *Penalties.* Failure to store peanuts, account for peanuts or handle peanuts in accordance with the requirements of this section or other requirements of this subpart shall constitute noncompliance with this subpart for which a penalty may be assessed in accordance with § 1446.144 of this subpart; provided further that for handlers operating under the physical supervision requirements of this subpart, if there is a deficiency in the dollar value of peanuts graded out of commingled storage as contract additional peanuts, the handler shall be liable for a penalty in accordance with § 1446.144 for this subpart, for failing to export the amount of contract additional peanuts determined to be necessary to create such a deficiency.

§ 1446.119 Disposal of meal contaminated by aflatoxin.

All meal produced from peanuts which are crushed domestically and found to be unsuitable for use as feed because of contamination by aflatoxin shall be disposed of for nonfeed purposes only. If the meal is exported, the export bill of lading shall reflect the analysis of the lot by inclusion and appropriate completion thereon the following statement showing aflatoxin content as parts per billion (PPB):

"This shipment consists of lots of meal which contain aflatoxin ranging from _____ to _____ PPB and averaging _____ PPB."

§ 1446.120 Disposition date.

(a) *Final disposition date.* Handlers shall dispose of all contract additional peanuts by August 31 of the year following the calendar year in which the crop was grown.

(b) *Extension of final disposition date.* Unless otherwise specified by the Executive Vice President of CCC, the final disposition date may be extended by the association to November 30 of the year following the calendar year in which the crop was grown if, by August 31, the handler:

(1) Furnishes information to the association showing that the contract additional peanuts have been milled and positive lot identified;

(2) Furnishes the association with the name and location of the storage facilities where the contract additional peanuts are physically located; and

(3) Provides a written statement to the association agreeing to pay for any supervision costs which are incurred with respect to contract additional peanuts after August 31.

(c) *Disposition following an extension.* The identical contract additional peanuts with respect to which a request for extension of the final disposition date has been granted by the association or CCC must be disposed of by export or crushing in conformity with the requirements of this subpart.

(d) *Penalties.* The failure of a handler to dispose of contract additional peanuts by the final date for disposition in accordance with the requirements of this subpart shall constitute noncompliance with the provisions of this subpart for failure to export or crush contract additional peanuts. In such cases, a penalty may be assessed against the handler in accordance with the provisions of § 1446.144 of this subpart.

§ 1446.121 Access to facilities.

A handler, by entering into contracts to receive contract additional peanuts or any person or firm otherwise receiving contract additional peanuts, shall be deemed to have agreed that authorized representative(s) of CCC and the association:

(a) May enter and remain upon any of the premises of the handler when such peanuts are being received, shelled, cleaned, bagged, sealed, weighed, graded, stored, milled, blanched, crushed, packaged, shipped, sized, processed into products, or otherwise handled;

(b) May inspect such peanuts and the oil, meal, and other products thereof; and

(c) May inspect the premises, facilities, operations, books, and records of the handler to the extent necessary to determine that such peanuts have been handled in accordance with this subpart.

§ 1446.122 Export provisions.

(a) *Export to a U.S. Government agency.* Except for the exportation of raw peanuts to the military exchange services for processing outside the United States, the export of peanuts in any form by or to a United States Government agency shall not be considered as export to an eligible country, but shall instead be considered a domestic edible use of such peanuts. However, sales to a foreign government which are financed with funds made available by a United States agency, such as the Agency for International Development or CCC, will not be considered sales to a United States Government agency if the peanuts are not purchased by the foreign buyer for transfer to a United States agency.

(b) *Export to an eligible country.* All contract additional peanuts which are not crushed domestically (including approved processing into flakes) and which are eligible for export shall be exported in accordance with the provisions of this subpart to an eligible country as peanuts or peanut products.

(c) *Penalty.* Contract additional peanuts or peanut products made from contract additional peanuts diverted or transshipped to any country other than an eligible country shall not be credited in the handler's favor against the handler's export obligation. Such handler shall be liable for a penalty as specified in § 1446.144 of this subpart, for failure to export unless the handler provides acceptable proof that additional peanuts or peanut products made from such peanuts have been exported to an eligible country and have not otherwise been transshipped or diverted.

§ 1446.123 Evidence of export.

(a) *Certified statement.* The handler shall provide a statement signed by the handler specifying the name and address of the consignee and certifying that the peanuts have been exported.

(b) *Documentation.* In addition to the statement required in paragraph (a) of this section and not later than 30 days after the final disposition date provided in § 1446.120 of this subpart, the handler shall furnish the association or CCC with the following documentary evidence of the export of peanuts or peanut products:

(1) *Export by water.* In the case where any of the peanuts are exported by water, a nonnegotiable copy of an onboard ocean bill of lading, signed on behalf of the carrier, showing the date and place of loading onboard vessel, the weight of the peanuts, peanut meal, or products exported, the name of vessel, the name and address of the U.S. exporter, and foreign buyer and the country of destination. Peanut meal which is unsuitable for use as feed because of contamination by afla-

toxin shall be identified on the bill of lading in accordance with this subpart.

(2) *Export by rail or truck.* In the case where any of the peanuts were exported by rail or truck, a copy of the bill of lading showing the weight of the peanuts or peanut meal or products exported, supplemented by a copy of the Shipper's Export Declaration or, in the alternative, a U.S., Canadian or Mexican customs document which shows entry into the country or other documentation acceptable to the association. Peanut meal which is unsuitable for feed use because of contamination by aflatoxin shall be identified on the bill of lading in accordance with this subpart.

(3) *Export by air.* In the case where any of the peanuts were exported by air, a copy of the airway bill showing the weight of the peanuts, peanut meal, or peanut products exported, the consignee and shipper, and other documentation acceptable to the association. Peanut meal which is unsuitable for feed use because of contamination by aflatoxin shall be identified on the airway bill in accordance with this subpart.

(c) *Penalties.* Failure to obtain required supervision from the association, or failure to handle and dispose of contract additional peanuts in accordance with the provisions of this section, shall constitute noncompliance with the provisions of this subpart for which a penalty may be assessed in accordance with § 1446.144 of this subpart.

§ 1446.124 Prohibition on importation or reentry of contract additional peanuts.

No exported contract additional peanuts nor peanut products made from additional peanuts shall be reentered in commercial quantities by anyone into the United States in any form. If contract additional peanuts or peanut products made from such peanuts are reentered into the United States, the handler importing such peanuts or peanut products shall be liable for a penalty assessed in accordance with § 1446.144 of this subpart, for reentering contract additional peanuts. Liability for liquidated damages arising out of purchases of loan additional peanuts (peanuts purchased from inventories of additional peanuts pledged as price support loan collateral) are governed by the terms of announcements issued by CCC describing the terms and conditions of such sales. All penalties shall be in addition to such liquidated damages as may be due to CCC.

[51 FR 44764, Dec. 12, 1986; 51 FR 45837, Dec. 22, 1986]

§ 1446.125 Loss of peanuts.

Should a handler suffer a loss of peanuts as a result of fire, flood or any other condition beyond the control of the handler, the portion of such loss allocated to contracted additional peanuts as determined by the association shall not be greater than the portion of the handler's total peanut purchases for the year attributable to contract additional peanuts purchased for export by the handler during such year. Such attribution shall take into account any dispositions of peanuts that occurred prior to the loss of the peanuts for which the attribution is made.

[51 FR 44764, Dec. 12, 1986; 51 FR 46997, Dec. 30, 1986]

§ 1446.126 Selecting supervision.

(a) *General.* Except for disposition of contract additional peanuts by crushing or processing into products or as otherwise required by the regulations of this subpart, supervision of the handling of contract additional peanuts shall not be required if a handler, by July 31 of the year in which the peanuts were produced or by a date otherwise approved by the Executive Vice President of CCC submits to the association a written statement agreeing to comply with the regulations of this subpart applicable to nonphysical supervision.

(b) *Choice.* Choice of supervision method shall be made by July 31. Unless the Executive Vice President of CCC agrees otherwise, no change of selection may be made after July 31 of the relevant crop year except that with respect to the 1986 crop such a change may be made prior to the commencement of shelling by the handler. If such change is made for the 1986 crop, the handler shall adjust the letter of credit accordingly.

(c) *Costs of supervision.* Regardless of the supervision option chosen, the handler shall bear the cost of supervision.

§§ 1446.127—1446.129 [Reserved]

PHYSICAL SUPERVISION

§ 1446.130 Storage requirements under physical supervision.

(a) *Commingled storage.* For handlers operating under physical supervision, contract additional peanuts placed in commingled storage must be accounted for on a dollar value basis less a one time adjustment for shrinkage for each crop equal to 4.0 percent of the dollar value of the peanuts for Virginia-type peanuts and 3.5 percent for all other peanut types. However, if such contract additional peanuts are graded out and accounted for prior to February 1 of the year following the year in which the peanuts were grown, the adjustment of the dollar value for shrinkage shall be 3.5 percent for Virginia-type and 3.0 percent for all other peanuts.

(b) *Identity preserved storage.* Contract additional peanuts stored "identity preserved" shall be inspected as farmers stock peanuts and settled on a dollar value basis. The handler shall receive, store, and otherwise handle such peanuts in accordance with good commercial practices and instructions provided by CCC.

§ 1446.131 Physical supervision of contract additional peanuts.

(a) *Supervision.* Handlers who do not select nonphysical supervision as set forth in § 1446.126 of this subpart or handlers who fail to submit a letter of credit sufficient for nonphysical supervision as required by this subpart, but otherwise submit a letter of credit adequate for physical supervision shall be deemed to have agreed to the physical supervision provisions of this subpart. Such handler must arrange for and the association shall conduct onsite supervision of domestic handling of contract additional peanuts including storing, shelling, crushing, cleaning, milling, blanching, weighing, and shipping.

(b) *Final dates for scheduling supervision.* Contract additional farmers stock peanuts shall be scheduled for supervision by the association during the normal marketing period but not later than July 31 of the calendar year following the year in which the crop was grown, unless prior approval of a later date has been made by the association.

(c) *Notifying the association.* Before moving or processing any contract additional peanuts, the handler or person deemed as an agent of the handler shall notify the association of the time such operation will begin and the approximate period of time required to complete the operation. When a plant is not currently under supervision, the handler shall give at least five working days of advance notice to the association so that supervision can be arranged.

(d) *Processing.* The identical contract additional peanuts shall be shelled or otherwise milled, crushed, or shelled and crushed under supervision of the association as a continuous operation separate from other peanuts. Shelled peanuts shall be identified with positive lot identity tags before being stored and moved for crushing, exportation, or processing into peanut products to be exported. Except as otherwise authorized by the association, such peanuts will be considered as having been crushed or exported only if positive lot identity has been maintained in the following manner:

(1) *Transportation.* The peanuts shall be transported from storage locations in a covered vehicle such as a truck or railroad car. The vehicle shall be sealed unless the association determines that identity of the peanuts can be maintained without sealing.

(2) *Storage.* Farmers stock peanuts shall be stored in separate building(s) or bin(s) which can be sealed or which the association otherwise determines will satisfactorily maintain lot identity. Milled peanuts shall be stored in such a manner that the association, under procedures issued by CCC, may make periodic inventory verification of the contract additional lots that are shown on association records as being in the storage facility. The handler

shall furnish the association with the name and location of the storage facilities where the contract additional peanuts are located.

(e) *Expense charged to handlers.* All supervision costs shall be borne by handlers.

§ 1446.132 Disposition of contract additional peanuts under physical supervision.

Except under the provisions of § 1446.133 of this subpart, the identical contract additional farmers stock peanuts and milled peanuts shelled under supervision of the association shall be disposed of in accordance with the provisions of this subpart applicable to contract additional peanuts and to physical supervision by domestic crushing or by export to an eligible country as follows:

(a) All kernels may be crushed domestically under supervision of the association representative; or

(b) All kernels may be exported for crushing, if fragmented; or

(c) All kernels that meet the edible export standards may be:

(1) Exported and the remaining kernels crushed domestically under supervision of the association representative, or

(2) Exported for crushing, if fragmented; or

(d) All of the peanuts may be exported as farmers stock peanuts, provided that such peanuts meet edible export standards and be positive lot identified; or

(e) The peanuts may be exported to an eligible country as peanut products if such products are produced domestically in accordance with instructions issued by CCC; or

(f) The peanuts may be exported as milled or inshell peanuts if they meet the edible export standards; or

(g) The peanuts may be considered exported or crushed if it is determined by CCC that such peanuts have been destroyed or otherwise made unsuitable for any commercial purpose.

§ 1446.133 Substitution of quota and additional peanuts.

(a) *Substitution of quota peanuts which have been exported*—(1) *Farmers stock peanuts.* With prior notification to and approval of the association, farmers stock quota peanuts of the same crop, type, quality, and area may be exported in place of such additional peanuts.

(2) *Milled peanuts.* With prior notification to and approved by the association peanuts milled under supervision of the association may be used to replace, in domestic edible use, quota peanuts of the same crop, type, area, and grade as recognized by the Peanut Administrative Committee (PAC) for edible quality grades, which have been previously exported. Such grades shall be established at the time the peanuts are milled and the lot is formed unless the Executive Vice President of CCC directs otherwise in writing. The quota peanuts exported, for which substitution is requested, must have been positive lot identified and otherwise handled as additional peanuts.

(b) *Use of additional peanuts for domestic edible uses prior to substitution.* Additional peanuts may be used for domestic edible use with prior notification and approval of the association and upon presentation to the association of an irrevocable letter of credit in an amount which is not less than 140 percent of the quota support rate for any portion of the lot for which substitution has not been approved in accordance with paragraph (a) of this section. Such letter of credit is in addition to the letter of credit required under §§ 1446.106 and 1446.109 of this subpart as a condition for approval of contracts for additional peanuts. Such additional letter of credit for substitution shall be issued in a form and by a bank which is acceptable to CCC. The handler shall subsequently deliver to the association satisfactory evidence that a like amount of quota peanuts of appropriate grade has been handled as contract additional peanuts and exported in accordance with these regulations. Such evidence must be submitted no later than 30 days after the final date for export as established in § 1446.120 of this subpart, or 15 days prior to the expiration of the letter of credit, whichever comes first. If satisfactory evidence is not presented by such date, CCC may authorize the association to draw against the letter of credit the full amount of the penalty which would otherwise be due for failure to dispose of contract additional peanuts in accordance with this subpart.

(c) *Time limitations.* Substitution may not be requested or approved with respect to contract additional peanuts for which the final disposition date has been extended in accordance with § 1446.120(b) of this subpart.

§ 1446.134 Domestic sale or transfer of contract additional peanuts.

The exact additional peanuts or quota peanuts shelled as contract additional peanuts and formed into lots under supervision must be exported or disposed of as set forth in this subpart. The transfer of an export obligation is not permitted under the physical supervision requirement of this subpart and the export obligation shall remain with the handler who took delivery of the contract additional peanuts from a producer.

§§ 1446.135—1446.137 [Reserved]

NONPHYSICAL SUPERVISION

§ 1446.138 Storage requirements under nonphysical supervision.

(a) *Basic shrinkage allowance.* For handlers operating under nonphysical supervision, contract additional peanuts placed in commingled storage must be accounted for on TKC basis less a one time adjustment for shrinkage for each crop and for all peanut types equal to one half of one percent (0.5 percent) of the total kernel content of the poundage obtained as contract additional peanuts, except as otherwise provided in this section for the 1988 or subsequent crop years.

(b) *Increased shrinkage allowance for the 1988 crop and subsequent crops.* Notwithstanding the provisions of paragraph (a) of this section, for handlers operating under nonphysical supervision who certify compliance with, and in fact comply with, such additional restrictions on use of various qualities of peanuts as may be specified by the Executive Vice President, CCC, to take into account common industry practices, the shrinkage allowance with respect to the 1988 crop and subsequent crops of peanuts will be 4.5 percent of the TKC of poundage obtained by the handler as contract additional peanuts.

[54 FR 30368, July 20, 1989, as amended at 54 FR 40859, Oct. 4, 1989]

§ 1446.139 Disposition requirements under nonphysical supervision.

In selecting nonphysical supervision a handler agrees to export to an eligible country the total kernel content of the peanuts of the same crop year and of like type, purchased by the handler as contract additional peanuts less, a one-time adjustment for shrinkage, equal to the following quantities:

(a) Sound split kernel peanuts in an amount equal to twice the poundage of such peanuts purchased by the handler as additional peanuts;

(b) Sound mature kernel peanuts in an amount equal to the poundage of such peanuts purchased by the handler as additional peanuts less the amount of sound split kernel peanuts purchased by the handler as additional peanuts;

(c) The remaining quantity of total kernel content of peanuts purchased by the handler as additional peanuts and not crushed domestically in accordance with the provisions of § 1446.140(c) of this subpart.

§ 1446.140 Disposition credits under nonphysical supervision.

(a) *Export credits for sound mature kernel peanuts.* The credits for sound mature export kernels of the same crop year and of like type may be earned for:

(1) The total pounds in a lot of exported peanuts which meet or exceed U.S. Standard grade for U.S. No. 1; or

(2) The total pounds, excluding splits as determined in paragraph (b)(2) of this section, in a lot of peanuts which meet PAC standards for

(i) Whole kernel peanuts with splits, or

(ii) No. 2 Virginia peanuts.

(b) *Export credits for sound splits.* Credits for sound splits of the same crop year and of like type may be earned for:

(1) The total pounds in a lot of exported peanuts which meet the U.S. Standard grade for splits; or

(2) The pounds of splits in lot of peanuts which meets PAC standards for

(i) Whole kernel with splits, or

(ii) No. 2 Virginia.

(c) *Export credits for all other kernels.* The balance of a TKC obligation less SMK and SS peanuts, from peanuts of the same crop year and of like type shall be disposed of in accordance with the provisions of this subpart applicable to contract additional peanuts and to nonphysical supervision by domestic crushing or by export to an eligible country as follows:

(1) The kernels may be crushed domestically under supervision of the association representative; or

(2) The kernels may be exported for crushing, if fragmented; or

(3) The kernels that meet Peanut Administrative Committee (PAC) grade for "other edible quality" may be exported and the remaining kernels:

(i) Crushed domestically under supervision of the association representative, or

(ii) Exported for crushing, if fragmented; or

(4) The peanuts may be exported as farmers stock peanuts, provided that such peanuts meet PAC grade for other edible quality and be positive lot identified; or

(5) The peanuts may be exported to an eligible country as peanut products if such products are produced domestically in accordance with instructions issued by CCC; or

(6) The peanuts may be exported as milled or inshell peanuts if they meet PAC grade for other edible quality export standards; or

(7) The peanuts may be considered exported or crushed if it is determined by CCC that such peanuts have been destroyed or otherwise made unsuitable for any commercial purpose.

(d) Any quantity of SMK or SS kernels exported in excess of the amount required to be exported may be credited toward the export requirement for the remaining kernels.

(e) *Export credits for peanuts processed into products for export.* To receive disposition credit for contract additional peanuts used in products for export, the shelled peanuts must be identified with positive lot identity tags before being moved for processing and meet any additional standards as may be specified by the association in accordance with instructions of the Executive Vice President of CCC. Such peanuts must meet U.S. Standard grade for edible peanuts. The peanuts shall be processed under supervision of the association unless the handler selects to process such peanuts under the provisions of § 1446.116 of this subpart.

(f) *Blanching exception.* Notwithstanding any other provision of this subpart and to the extent permitted by the Executive Vice President of CCC, a blancher may be allowed credit for the preblanching weight of peanuts blanched for export if the blanching and crushing of the residue is conducted under supervision of agents of the CCC or the association.

(g) *Export credits for inshell peanuts.* With respect to peanuts exported inshell, in accordance with instructions from the Executive Vice President of CCC, SS credits may be earned on the portion of the total kernel content of the lot that are SS, and SMK credits may be earned for the balance of the total kernel content of the lot that are not SS. Such inshell peanuts must meet edible export standards.

[51 FR 44764, Dec. 12, 1986, as amended at 53 FR 35986, Sept. 15, 1989]

§ 1446.141 Export credits for crushing SMK and SS peanuts for 1987 through 1990 crops.

(a) *Requesting physical supervision of crushing for export credit.* Beginning with 1987 crop peanuts, a handler operating under the provisions of this subpart for nonphysical supervision may crush SMK and SS peanuts for export credit for the applicable kernel type by obtaining physical supervision of the peanuts under the following conditions and those additional conditions set forth in paragraphs (b) through (d) of this section:

(1) *Milled peanuts with aflatoxin.* A handler operating under nonphysical supervision may receive partial export credit for crushing milled SMK and SS peanuts having aflatoxin contamination. To do so, the handler must request and arrange for physical super-

vision prior to crushing and prior to the final disposition date for contract additional peanuts for the relevant crop year. A request to switch to physical supervision must be made each time a quantity of such peanuts are to be crushed. The provisions in this section for crushing aflatoxin peanuts shall apply only to milled peanuts and shall not apply to farmers stock peanuts.

(2) *Edible quality milled or edible quality farmers stock peanuts.* In addition to the allowance made in paragraph (a)(1) of this section, the following peanuts may be crushed for export credit by a handler who has chosen nonphysical supervision:

(i) Milled peanuts that meet PAC outgoing quality standards for edible export peanuts, and

(ii) Farmers stock peanuts that at the time of crushing meet PAC incoming quality standards for Segregation 1 peanuts.

To receive export credit under this paragraph, the handler must request and arrange for phyiscal supervision of such crushing. Such request must be made prior to the final disposition date for contract additional peanuts for the relevant crop year and, with respect to farmers stock peanuts, prior to the time the peanuts are graded out of commingled storage. Unless otherwise approved by the Executive Vice President, CCC, only one request may be approved under this paragraph for any handler for the crushing of peanuts of the same crop year, type, and production area.

(3) *Cost of Supervision.* The handler shall bear the cost of all supervision required by this section or undertaken pursuant to this section.

(b) *Supervision of crushing of SMK and SS peanuts*—(1) *Farmers stock peanuts.* Physical supervision of farmers stock peanuts pursuant to this section must begin at the gradeout from commingled storage and continue through the crushing of the peanuts as required by the provisions of this subpart applicable to handlers' choosing physical supervision for all of their farmers stock peanuts.

(2) *Milled peanuts.* Subject to the provisions of paragraph (a) of this section, physical supervision of milled peanuts shall be provided under the provisions of this subpart applicable to physical supervision of milled peanuts. The association may require that the positive identified lots be regraded before crushing.

(c) *Determining export credit.* Only those peanuts for which crushing for export credit is specifically provided for in this section may be crushed for such credit by handlers operating under the nonphysical option. Subject to the limitations set forth by this section, export credit for SMK, SS, and AO kernels crushed under physical supervision for credit under this section shall be determined for farmers stock peanuts from data on the applicable ASCS-1007's, and for milled peanuts from the applicable FV-184-9's.

(d) *Crushing peanuts to meet export/disposition obligation*—(1) *Credit for crushing milled peanuts meeting edible export standards.* Milled peanuts that meet PAC outgoing quality standards for edible export peanuts may be crushed for credit as permitted by the provisions of this section and credits for the SMK, SS, or AO kernel content of such peanuts may be applied pound-for-pound toward the export obligation for the like kernel description.

(2) *Credit for crushing milled peanuts not meeting edible export standards due to aflatoxin contamination.* Notwithstanding any other provisions of this section, the amount of SMK and SS kernels contained in aflatoxin contaminated peanuts crushed under the provisions of paragraph (a)(1) of this section that a handler may apply toward the export obligation for like kernel description shall not exceed an amount determined by multiplying the quantity of such peanuts for each kernel type that is crushed by a factor calculated by dividing the amount of contract additional peanuts that the handler purchased for the marketing year by the total amount of peanuts purchased by the handler for the marketing year. The amount of SMK and SS peanuts crushed under the provisions of paragraph (a)(1) of this section, but not applied to the export obligation for SMK and SS kernels, may be applied toward the obligation for AO kernels. The allowance for crush-

ing aflatoxin-contaminated peanuts applies only to milled peanuts.

(3) *Credit for crushing farmers stock Segregation 1 peanuts.* Only farmers stock peanuts that at the time of crushing meet PAC incoming quality standards for Segregation 1 peanuts may be crushed for credit under the provisions of this section. Credits for the SMK, SS, or AO kernel content of such peanuts, as determined under this section, may be applied pound-for-pound toward the export obligation for each like kernel description. However, such amounts shall be subject to adjustment for the average dollar value as provided in paragraph (d)(4) of this section.

(4) *Adjusting export credit for average dollar value of farmers stock peanuts.* With respect to the crushing of farmers stock peanuts for export credit under this section, if CCC determines, based upon the applicable price support schedule, that the average dollar value of edible farmers stock peanuts graded out of a handler's commingled storage and crushed for export credit under the provisions of this section is less than the average dollar value of all peanuts purchased by the handler as contract additional peanuts, the amount of export credit for each kernel description as otherwise determined under paragraph (d)(3) of this section shall be adjusted by multiplying each quantity for each kernel type by a factor to be determined by dividing:

(i) The average dollar value per ton of peanuts graded out of the handler's commingled storage, accounted for as set forth in this subpart, and crushed for export credit under the provisions of this section; by

(ii) The average dollar value per ton of all peanuts purchased by the handler as contract additional peanuts.

(5) *Peanuts not eligible for crushing credit for SMK and SS export obligation.* Milled peanuts that do not meet PAC outgoing quality standards for edible export peanuts for any reason other than aflatoxin contamination, or farmers stock peanuts that do not meet PAC incoming quality standards for Segregation 1 peanuts, shall not be eligible for crushing for SMK and SS export credit. However, crushing credit for such peanuts may be applied toward a handler's AO kernel obligation.

[52 FR 49349, Dec. 31, 1987, as amended at 55 FR 1384, Jan. 16, 1990]

§§ 1446.142—1446.143 [Reserved]

PENALTIES

§ 1446.144 Assessment of penalties against handlers.

(a) *Penalty liability.* A handler shall be subject to the penalty for violations of the provisions of this subpart including, but not limited to, any or all of the following violations:

(1) Failure to register as a handler of peanuts as set forth in § 1446.77 of this subpart.

(2) Failure to examine and make entries on marketing card as required by §§ 1446.79 and 1446.80.

(3) Failure to keep or make available records in accordance with §§ 1446.83, 1446.84, 1446.85, 1446.86, or 1446.114 of this subpart; or

(4) Marketing excess quota peanuts, as set forth in § 1446.115 of this subpart, including any marketing of reentered contract additional peanuts or peanut products made from contract additional peanuts as set forth in § 1446.117 of this subpart, or any marketing of imported peanut products made from additional peanuts purchased from the inventory of CCC loan collateral peanuts; or

(5) Failure to store and account for contract additional peanuts in accordance with the requirements of this subpart.

(6) Failure to export or dispose of contract additional peanuts in accordance with the requirements of this subpart or failure to export or crush such peanuts by the final disposition date as established in § 1446.120 of this subpart; or

(7) Failure to obtain supervision of or to handle contract additional peanuts as required by this subpart; or

(8) Reentering or importing contract additional peanuts or products made from such peanuts as prohibited by § 1446.124 of this subpart; or

(9) Failure to comply with other provisions of this subpart.

(b) *Penalty rate and amount.* The penalty rate for any violation of this subpart shall be equal to 140 percent of the basic quota support rate for the applicable crop year for the type of peanuts involved in the violation times the quantity of peanuts:

(1) Handled by an unregistered handler; or

(2) Not properly entered on the marketing card; or

(3) For which records have not been properly kept or made available; or

(4) Marketed as excess quota peanuts; or

(5) Not properly stored; or

(6) Not properly disposed of or exported; or

(7) Not properly supervised or handled in accordance with the regulations of this subpart; or

(8) Imported as contract additional peanuts; or

(9) Determined by CCC to have been necessary to produce the quantity of peanut products made from contract additional peanuts imported and sold in the United States; or

(10) Involved in such other violation of this subpart as may occur.

(c) *Notice of assessment.* A handler shall be notified in writing of the assessment of a penalty by a CCC contracting officer. Such notice shall state the basis for the assessment of the penalty, and shall advise the handler of the handler's appeal rights under this subpart.

(d) *Interest liability.* The person liable for payment or collection of any penalty provided for in these regulations shall be liable also for interest thereon at a rate per annum equal to the rate of interest which was charged the CCC by the Treasury of the United States on the date such penalty became due. The date on which the penalty became due shall be the date on which the penalty was first assessed.

(e) *Applicability.* The provisions of this section are in addition to other remedies provided for by this subpart or other provisions of law.

§ 1446.145 Appeals and requests for reduction.

(a) *Appeals.* A handler who is dissatisfied with a penalty assessed by the CCC contracting officer pursuant to this subpart may file a written request for reconsideration of the assessment. Such request must be made to the CCC contracting officer no later than 15 days after the handler receives the notice of assessment. If the handler is dissatisfied with the determination of the contracting officer with respect to the reconsideration, the handler may appeal such determination by submitting a written notice of appeal to the Executive Vice President of CCC, within 15 days of the issuance of such determination by the contracting officer. Except as otherwise provided herein, such appeal shall be conducted in accordance with the appeal regulations set forth in Part 780 of this title.

(b) *Request for reductions of penalty*—(1) *Form of request.* A handler may request a reduction in the amount of the penalty which has been assessed. Such a request shall be treated as an appeal under paragraph (a) of this section, and must comply with the requirements of that paragraph. The handler may simultaneously contest liability for the penalty and, in the alternative, request that the penalty be reduced.

(2) *Reduction criteria.* The penalty assessed under this subpart may be reduced if the Executive Vice President of CCC, determines that:

(i) The violation for which the penalty was assessed was minor, or was done unintentionally or unknowingly by the handler; and

(ii) That the handlers made a good faith effort to comply fully with the terms and conditions of the program; and

(iii) That a reduction in the amount of the penalty would not impair the effective operation of the price support program for peanuts.

(3) *Reduction limits.* The penalty shall not be reduced to less than an amount which is equal to 40 percent of the basic quota support rate for the applicable crop year times the quantity of peanuts involved in the violation except that the amount of any penalty resulting from the failure to export contract additional peanuts shall not be reduced. There shall be no limitation on the amount by which an as-

sessment of liquidated damages may be reduced.

§ 1446.146 Liens against peanuts on which a penalty is due.

(a) *Lien on peanuts.* Until the amount of any penalty which is imposed in accordance with this subpart is paid, a lien shall exist in favor of the United States for the amount of the penalty. Such lien shall apply on the peanuts with respect to which such penalty is incurred and on any other peanuts purchased or otherwise acquired in the same or subsequent marketing year in which the person liable for payment of such penalty has an interest.

(b) *Debt record.* The lien specified in subparagraph (a) shall be deemed to attach at the time the penalty is entered on the debt records which shall be maintained for this purpose by the associations.

(c) *List of peanut marketing penalty debts.* Each area marketing association shall maintain a debt record for all handlers indicating the amounts due from each handler. This list will be available for examination upon written request to the area association by any interested party.

§ 1446.147 Schemes and devices.

If the Executive Vice President of CCC or the association, with approval of the Executive Vice President, determines that a handler has knowingly adopted any scheme or device which tends to defeat the purpose of the regulations of this subpart or has made any fraudulent representation, or has misrepresented any fact affecting a program determination, such handler will be subject to a penalty which shall be assessed in such manner as is determined will correct for such scheme, or device fraud or misrepresentation.

PAPERWORK REDUCTION

§ 1446.148 Paperwork Reduction Act assigned numbers.

The information collection requirements contained in these regulations (7 CFR Part 1446) have been approved by the Office of Management and Budget (OMB) in accordance with 44 U.S.C. Chapter 35 and have been assigned OMB control numbers 0560-0003, 0560-0006, 0560-0014, 0560-0015.

PART 1464—TOBACCO

Subpart A—Tobacco Loan Program

Sec.
1464.1 Administration.
1464.2 Availability of price support.
1464.3 Level of price support.
1464.4 Deductions from advances.
1464.5 Interest rate and general provisions.
1464.6 Maturity date.
1464.7 Eligible producers.
1464.8 Eligible tobacco.
1464.9 Auction warehouse certification of flue-cured tobacco.
1464.10 No net cost tobacco fund or account.
1464.11 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

AUTHORITY: Secs. 4 and 5 of the Commodity Credit Charter Act, as amended, 62 Stat. 1070 as amended, 1072 15 U.S.C. 714b, 714c, secs. 101, 106, 106A, 106B, 401, 403 of the Agricultural Act of 1949, as amended, 63 Stat. 1051, as amended, 74 Stat. 6, as amended, 96 Stat. 197, as amended, 63 Stat. 1054, as amended, 7 U.S.C. 1441, 1445, 1445-1, 1421, 1423, sec. 1001C of the Food Security Act of 1985, as amended, 99 Stat. 1444, as amended, 7 U.S.C. 1308.

Subpart A—Tobacco Loan Program

SOURCE: 45 FR 9253, Feb. 12, 1980, unless otherwise noted.

§ 1464.1 Administration.

(a) This program will be administered by the Tobacco and Peanuts Division, ASCS, under the general direction and supervision of the Executive Vice President, CCC. The program will be carried out by cooperative marketing associations (hereinafter referred to as "associations") acting on behalf of their producer members. To obtain a price support loan, an association must enter into a loan agreement with CCC. The loan agreement will set forth terms and conditions for making price support available to producers. To the extent provided in the loan agreement, an association shall meet the eligibility requirements for price support prescribed in the Cooperative Marketing Associations Eligibility Requirements for Price Support (Part 1425 of this chapter), as amended. CCC reserves the right to restrict the number of associations with which it will contract. In so doing, CCC will select such associations as it deems necessary or desirable to effectuate the purposes of the program with a maximum of efficiency and economy of operations. The names of such associations may be obtained from the Tobacco and Peanuts Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013.

(b) Each year CCC will make loans to associations. The associations in turn will make price support advances available to eligible producers either directly or through auction warehouses. The tobacco on which producers receive price support advances will serve as security for the loans. Loans made to associations will include not only the initial loan value of the tobacco, but also amounts to cover costs of receiving, processing, storing, and selling the loan tobacco, including that part of overhead costs not borne by the association pursuant to § 1464.4. Associations will be authorized to enter into contracts for these services through the usual trade channels. Loans also may include amounts to cover any Federal and State income taxes which the associations are required by the Internal Revenue Service or State governmental body to pay on income received from the sale of loan tobacco.

[45 FR 9253, Feb. 12, 1980, as amended at 47 FR 51555, Nov. 16, 1982; 48 FR 21110, May 11, 1983]

§ 1464.2 Availability of price support.

(a) *Kind of tobacco.* Price support will be available to eligible producers on the following kinds of eligible tobacco subject to conditions listed in §§ 1464.7 and 1464.8 respectively.

Flue-cured tobacco, types 11, 12, 13, and 14.
Kentucky-Tennessee Fire-cured tobacco, types 22 and 23.
Virginia Fire-cured tobacco, type 21.
Virginia Sun-cured tobacco, type 37.
Dark Air-Cured tobacco, types 35 and 36.
Burley tobacco, type 31.
Maryland tobacco, type 32.
Cigar filler tobacco, type 41.
Cigar filler and binder tobacco, types 42, 43, 44, 53, 54, and 55.
Puerto Rican tobacco, type 46.
Cigar binder tobacco, types 51 and 52.

(b) *Method of providing price support*—(1) *Through auction warehouses.* (i) Price support will be available for each lot of eligible tobacco offered for sale at auction warehouses which have contracted with an association, on a form of agreement approved by CCC, to make price support advances to producers on behalf of the association. Producers will deliver their tobacco to auction warehouses which will display the tobacco and offer it for sale at auction. Each contract between an association and an auction warehouse will require the auction warehouse to see that producers are informed that price support advances are available for each lot of eligible tobacco offered for sale at auction when the final bid is less than the price support rate available for the grade of eligible tobacco comprising such lot. For Flue-cured and Burley tobacco, the associations' contracts with auction warehouses will also require the auction warehouses to mark any tobacco sale bill "No Price Support" if the marketing of the pounds of tobacco covered by such bill will result in the producer marketing in excess of 103 percent of the producer's effective farm marketing quota. Producers will receive price support advances from the warehouseman for any tobacco to be consigned by the warehouseman to the association. Price support advances will be paid to the producer at the time the warehouseman settles with the producer for the entire quantity of the producer's tobacco that has been displayed for inspection and offered for sale on any one day's auction market. The warehouseman will be reimbursed by the association with funds borrowed from CCC.

(ii) Price support will be available only at warehouses where tobacco inspection service is provided by the Agricultural Marketing Service, USDA. Inspection and price support services may be extended to new markets or to additional sales on established markets in accordance with this part and Subpart A of Part 29 of this title which provides for formal public hearings prior to extending of additional services.

(iii) CCC reserves the right to direct the association to withhold a contract under the price support program from any auction warehouse for one or more years if, based on previous performance of similar contracts, or other evidence, there is substantial reason to believe that such warehouse will not fulfill its contract obligations.

(2) *Special requirements for flue-cured tobacco.* Price support will be available only on flue-cured tobacco which has been designated for sale at specific warehouses by the producer under the following conditions:

(i) *Definition.* "Producer" as used in this paragraph means the person who was issued the tobacco marketing card pursuant to Part 725 of this title.

(ii) *Producer designation of warehouses.* Producers will be required, as a condition of price support, to designate the warehouses at which they will market their tobacco. Such designations may be at any warehouse or warehouses in any market within a radius of 100 miles from the county seat of the county in which the farm is located, or if such farm is physically within two counties, then from the county seat of the county in which the county ASCS office administering that farm is located. To the extent there are less than eight markets within such radius, any warehouse or warehouses in any of the eight markets nearest to the county seat may be designated. A producer may obtain price support only in a warehouse which the producer has designated, and at each such warehouse only with respect to the quantity of tobacco designated for sale at such warehouse.

(iii) *When producer designations shall be made.* Producers must designate the warehouse(s) at which they will market their tobacco during a period which shall be announced beforehand by the local county ASCS office. The period for making designations shall be before May 31 each year. Producers who lease quota or whose farm is reconstituted (the combining or dividing of a farm due to a change in operation) after such period may designate the warehouse(s) at which their tobacco will be marketed according to procedures to be established by the Deputy Administrator, State and County Operations, ASCS. Producers who have designated warehouses which cease to operate or cease to have tobacco inspection or price support available may change their designations at any time after such occurrences. Producers who have designated warehouses whose inspection services have been temporarily suspended for any reason for the equivalent of at least one sales day may change their designation at any time after such occurrences. Redesignation (changes in warehouse(s) designated or in pounds designated to a warehouse) or designations for farms which have not previously designated tobacco may be made by producers during the five business days ending on the first Friday of each month during the flue-cured tobacco marketing season. Such redesignation or initial designation shall be made on any one day of each redesignation period. Such redesignation or initial designation shall be effective on the second Monday following the Friday on which the redesignation period ends.

(iv) *Form and content of designations.* A designation shall be made for each warehouse at which a producer desires to market tobacco by executing a form provided by the county ASCS office. The producer will be required to indicate on such form the name of the warehouse or warehouses designated by the producer and the pounds of flue-cured tobacco the producer desires to sell at such warehouse as well as any other information required to be stated on such form.

(v) *Entering warehouse designation information.* The warehouse code number of the warehouse the producer has designated will be indicated on the farm marketing card. If an effective date is determined in accordance with paragraph (b)(2)(iii) of this section, such effective date will be shown on the farm marketing card. If the producer has not designated a warehouse, a warehouse code will not be shown on the marketing card. Changes in designation by the producer shall be accomplished by the producer returning the marketing card to the county ASCS office and requesting the transfer of any unmarketed pounds of flue-cured tobacco shown on any marketing card to another eligible warehouse or warehouses.

(vi) *Use of warehouse designation information.* (A) A separate sale bill marked "no price support" shall be prepared for that quantity of tobacco weighted in that is in excess of the balance of the pounds designated as shown on the marketing card:

(B) The warehouse shall mark "no price support" on a sale bill for any tobacco which is presented for sale and which is accompanied by a marketing card which does not show a warehouse code, which shows a code of another warehouse, or which shows an effective date which is later than the date on which the tobacco is presented for sale.

(vii) *Availability of designation information.* Each county ASCS office shall send all designations received to the Flue-Cured Tobacco Cooperative Stabilization Corporation, Raleigh, North Carolina, following each designation period and each period for changing designations. That association shall inform the Flue-Cured Tobacco Advisory Committee of the pounds designated to each warehouse and the pounds of any undesignated tobacco which, for the purpose of recommending opening dates and selling schedules in accordance with Part 29 of this title, is available for apportioning for sale at each warehouse. That association also shall furnish each warehouse the name and address of the producers who designated the warehouse, the pounds each designated and the pounds which represented 103 percent of the marketing quota of each such producer.

(viii) *Failure to comply with opening date and selling schedule by warehouses.* Warehousemen shall comply with opening date and selling schedule requirements as provided in 7 CFR 29.9406.

(3) *Upon direct delivery to the Association.* Eligible producers in nonauction market areas may deliver eligible tobacco to central receiving points designated by the appropriate association. Eligible producers in auction market areas who have eligible tobacco which is security for a farm storage loan obtained pursuant to Part 1421 of this chapter may, after the close of all auction markets for such kind of tobacco, including cleanup sales, deliver the tobacco to central receiving points designated by the appropriate association. After the tobacco has been graded by USDA inspectors, the producer will receive the price support advance directly from the association for any amount in excess of the amount necessary to repay the farm stored loan.

(4) *Period of price support.* Price support will be available to eligible producers on eligible tobacco only during each year's normal marketing season for each kind of tobacco for which support is provided. In case of loans on farm stored flue-cured tobacco which is delivered directly to the association, the normal marketing season shall include the date the producer was directed to deliver the tobacco to the association which will be soon after the close of all markets including cleanup sales.

(5) Beginning with the 1981 crop, eligible producers may obtain price support on untied burley tobacco packed in bales subject to the following conditions:

(i) The quality and condition of the tobacco contained in each bale delivered for price support as a single lot will be representative of the quality and condition of the tobacco contained in all other such bales of the same lot.

(ii) The tobacco in each bale will be stalk-cured.

(iii) The bales will not contain foreign matter or conceal inferior tobacco.

(iv) Specification of bales:

(A) Bales must be approximately 1x2x3 feet in size.

(B) The leaves in bales must be untied and oriented.

(C) The basket ticket shall show the number of bales in the lot. Each bale in the lot shall be identified by a uniform identification tag 1⅝ inches wide by 3¼ inches long which shall be attached securely to the bale and shall show at least the following information: (*1*) Warehouse registration number, (*2*) basket ticket identification number, and (*3*) bale number.

[45 FR 9253, Feb. 12, 1980; 45 FR 26687, Apr. 21, 1980, as amended at 45 FR 68914, Oct. 17 1980; 46 FR 48901, Oct. 5, 1981; 47 FR 28607, July 1, 1982; 47 FR 44542, Oct. 8, 1982; 48 FR 28425, June 22, 1983; 51 FR 32426, Sept. 12, 1986]

§ 1464.3 Level of price support.

(a) The level of price support for eligible tobacco shall be determined in accordance with section 106 of the Agricultural Act of 1949, as amended.

(b) Flue-Cured tobacco of varieties Coker 139, Coker 140, Coker 316, Reams 64, Reams 266, and Dixie Bright 244, or a mixture or strain of such seed varieties or any breeding line of Flue-Cured tobacco seed varieties, including, but not limited to, 187 Golden Wilt (also designated by such names as No-Name, XYZ), having the quality and chemical characteristics of the seed varieties designated as Coker 139, Coker 140, Coker 316, Reams 64, Reams 266, or Dixie Bright 244 will be supported at one-half the support rate, plus 50 cents per hundred pounds, for comparable grades of acceptable varieties.

[51 FR 32426, Sept. 12, 1986]

§ 1464.4 Deductions from advances.

(a) There may be deducted from price support advances paid to tobacco producers amounts to help defray administrative overhead costs incurred by producers associations through which price support is made available to tobacco producers.

(b) If any producer on a farm is indebted to the United States and such indebtedness is listed on the Claim Control Record, Form ASCS-604, the Government will effect collection of the amount of the indebtedness by setoff from the amount of price support advance due the producer in the following manner: Any marketing card covering tobacco eligible for price support issued for such farm in accordance with the applicable regulations issued by the Secretary of Agriculture with respect to marketing quotas (Parts 723 through 726 of this title) will bear a notation showing the indebtedness, the name of the debtor and the amount of the indebtedness. The acceptance and use of a marketing card bearing a notation of indebtedness to the United States by a producer named as debtor on such card will constitute an authorization by such producer to any tobacco warehouseman or association to pay the United States the price support advance due the producer to the extent of his/her indebtedness set forth on such card but not to exceed that portion of the price support advance remaining after deduction of usual warehouse and authorized price support charges and amounts due prior lienholders. The acceptance and use of a marketing card bearing a notation and information of indebtedness to the United States will not constitute a waiver of any right of the producer to contest the validity of such indebtedness by appropriate administrative appeal or legal action.

(c) If any producer is indebted to the United States for a farm storage loan obtained pursuant to Part 1421 of this chapter, the principal amount of such loan will be deducted from the price support advance paid the producer by the association and will be applied to repayment of the farm storage loan.

[45 FR 9253, Feb. 12, 1980, as amended at 47 FR 28608, July 1, 1982]

§ 1464.5 Interest rate and general provisions.

The loans made to the associations will bear interest at the rate announced by CCC and will be nonrecourse both as to principal and interest except in the case of misrepresentation, fraud or failure to carry out the loan agreement. In instances where the loan to the association is made on a quantity of tobacco on which a farm storage loan had been made, any unpaid interest applicable to the farm storage loan on such quantity of tobacco will not be collected from the producer who obtained the farm stored loan but will be added to the accrued interest of the loan made to the association. Tobacco loses its identity as to original ownership through commingling in the packing process, and individual producers may not redeem their tobacco once it has been pledged as security for the loan. Associations will sell the loan tobacco as provided in the loan agreements for each crop, and the net proceeds of sales of the loan collateral of each crop will be applied to the loan account for such crop until the loan is repaid in full. With respect to the 1981 and prior crops, if the proceeds from the sale of loan collateral of the 1981 or any prior crop exceed (a) the amount of the loan plus all fees, handling charges, operating costs and interest; and (b) any amount due CCC under a barter transfer agreement entered into between CCC and the association, such excess shall constitute "net gains" and shall be distributed in cash by the association to the producers who placed the tobacco under loan unless other disposition is approved by CCC.

[45 FR 9253, Feb. 12, 1980, as amended at 50 FR 7574, Feb. 25, 1985; 51 FR 32426, Sept. 12, 1986]

§ 1464.6 Maturity date.

Loans made under the program will mature on demand.

§ 1464.7 Eligible producer.

To qualify as an eligible producer for purposes of receiving price support during the current marketing year a person must have eligible tobacco, as provided in § 1464.8, for marketing and such person:

(a) Must have agreed to make contributions to a No Net Cost Fund or pay assessments to a No Net Cost Account, as applicable, in accordance with § 1464.10.

(b) Must not have been found, after notice and opportunity for an administrative hearing in accordance with Part 780 of this title, to have:

(1) Knowingly delivered nested tobacco for the purpose of receiving price support.

(2) Filed a false report with respect to the use of pesticides on tobacco produced for marketing during the current marketing year.

(c) Must be in compliance with the provisions of Part 12 of this title.

(d) Must not be ineligible, in accordance with Part 1498 of this title, to receive price support payments, loans, and benefits.

[51 FR 32426, Sept. 12, 1986, as amended at 53 FR 43675, Oct. 28, 1988]

§ 1464.8 Eligible tobacco.

Eligible tobacco for the purpose of pledging such tobacco as collateral for a price support loan is any tobacco of a kind for which price support is available, as provided in § 1464.2, that is in sound and merchantable condition and:

(a) Is not a kind of tobacco for which marketing quotas are not in effect for the marketing year because marketing quotas have been disapproved in a referendum of producers;

(b) Is offered for marketing by the person who was the producer of the tobacco, or in the case of a deceased producer, by the duly authorized successor(s) in interest;

(c) Is offered for marketing in accordance with § 1464.2(b);

(d) If marketing quotas are in effect for the kind of tobacco:

(1) Except for burley tobacco, the farm operator has filed a report of the acreage planted to tobacco on the farm in the applicable year in accordance with Part 718 of this title.

(2) The tobacco was produced on a farm on which neither the reported nor determined acreage of the kind of tobacco exceeds any acreage allotment established for the farm in accordance with the applicable Parts 724 through 726 of this title for the kind of tobacco for the applicable year.

(3) Is identified when delivered to the association either directly or through an auction warehouse with a single marketing card for each lot of tobacco.

(e) If marketing quotas are in effect for the kind of tobacco or if marketing quotas are not in effect but would have been in effect for the kind of tobacco had such marketing quotas not been terminated by the Secretary, the operator of the farm on which the tobacco was produced:

(1) Has certified that all tobacco delivered from such farm for price support will not have not been nested as defined in Part 29 of this title.

(2) Has certified to the county ASC committee on a form approved by the Deputy Administrator that all pesticides (including plant regulators, defoliants, and desiccants), as defined in 40 CFR 162.3, which were used in connec-

tion with the production of the tobacco have been approved by the Environmental Protection Agency for use on tobacco and any such pesticides that were used were applied in accordance with label directions.

(3) Has not refused to permit the sampling of such tobacco, either on the farm or where stored, for chemical analysis for the purpose of verifying the accuracy of any pesticide certification.

(f) With respect to burley and flue-cured tobacco only, is a quantity of tobacco which when added to the pounds of the respective kind of tobacco previously marketed from the farm during the marketing year does not exceed 103 percent of the effective farm marketing quota established for the respective kind of tobacco for that year.

(g) With respect to flue-cured tobacco only, is a quantity of tobacco which was delivered to the association through an auction warehouse and is a quantity which when added to the pounds of flue-cured tobacco previously marketed from the farm at that warehouse does not exceed the quantity of flue-cured tobacco designated by the farm operator for marketing at that warehouse.

(h) With respect to Puerto Rican tobacco only, is tobacco which the producer has certified to the association as meeting the following requirements:

(1) All pesticides (including plant regulators, defoliants, and desiccants), as defined in 40 CFR 162.3, which were used in connection with the production of the tobacco, have been approved by the Environmental Protection Agency for use on tobacco and any such pesticides that were used were applied in accordance with label directions.

(2) All tobacco delivered for price support has not been nested as defined in Part 29 of this title.

[51 FR 32426, Sept. 12, 1986]

§ 1464.9 Refund of price support advance.

In any case in which a producer has received price support on a lot of tobacco such producer shall refund to CCC any price support advance received with respect to such lot of tobacco if it is determined, after notice and opportunity for an administrative hearing in accordance with Part 780 of this title, that such producer:

(a) Knew that such lot of tobacco was nested, as defined in Part 29 of this title, at the time such tobacco was delivered for the purpose of receiving price support.

(b) Filed a false report with respect to the use of pesticides on tobacco produced on the farm from which such lot of tobacco was identified, at the time of marketing, as having been produced.

[51 FR 32427, Sept. 12, 1986]

§ 1464.10 No net cost tobacco fund or account.

(a) *Definitions.* As used in this part and in all instructions, forms, and documents in connection therewith, the following terms shall have the meanings herein assigned to them.

(1) *"Account"* means an account established within the CCC for an association, which account shall be known as the "No Net Cost Tobacco Account."

(2) *"Area"* when used in connection with an association, means the general geographical area in which farms of the producer-members of such association are located, as determined by the Secretary.

(3) *"Association"* means a producer-owned cooperative marketing association which has entered into a loan agreement with CCC to make price support available to producers of tobacco.

(4) *"CCC"* means the Commodity Credit Corporation.

(5) *"Fund"* means the capital account to be established within each association, which account shall be known as the "No Net Cost Tobacco Fund".

(6) *"Net gains"* means the amount by which total proceeds obtained from the sale by an association of a crop of quota tobacco pledged to CCC for a price support loan exceeds the principal amount of the price support loan made by CCC to the association on such crop, plus interest and charges.

(7) *"Quota tobacco"* means any kind of tobacco for which marketing quotas

are in effect or for which marketing quotas are not disapproved by producers.

(8) *"To market"* means to dispose of quota tobacco by voluntary or involuntary sale, barter, exchange, gift between living persons, or consigning the tobacco to an association for a price support advance.

(9) "Purchaser" means any person who purchases in the United States, either directly or indirectly for the account of such person or another person, burley or flue-cured tobacco from the producer, or, with respect to the 1986 and subsequent crops of such tobacco, from an association.

(b) *Establishing a No Net Cost Tobacco Fund.* Except as provided in paragraph (c) of this section, each association shall establish and maintain a Fund in accordance with the requirements of section 106A of the Agricultural Act of 1949, as amended.

(c) *Establishing a No Net Cost Tobacco Account.* Upon request of any association, an Account shall be establish and maintained for such association in lieu of a Fund. Also, after consultation with an association, the Secretary may established and maintain an Account for such association in lieu of a Fund if the Secretary determines that the accumulation of the Fund for such association is, and is likely to remain, inadequate to reimburse CCC for net losses which CCC may sustain under its loan agreement with such association. The requirements of section 106B of the Agricultural Act of 1949, as amended, shall be applicable with respect to an Account.

(d) *Producer contributions or assessments.* As a condition of eligibility for price support during the applicable marketing year a producer of quota tobacco shall agree to make contributions to the Fund established for the association serving the area for the kind of tobacco to be marketed by such producer during such marketing year, or, if a Fund has not been established for such association, pay assessments to the Account established for such association. The amount of any contribution or assessment shall be determined in accordance with sections 106A and 106B of the Agricultural Act of 1949, as amended.

(e) *Filing of agreement.* Any agreement to make contributions to a Fund or pay assessments to an Account shall be on a form approved by the Deputy Administrator and shall be filed with the local county ASC committee prior to the issuance of a marketing card for use in identifying tobacco to be marketed from the farm of the kind of tobacco for which such agreement is applicable.

(f) *Responsibility of farm operator.* The farm operator shall determine whether all producers on the farm agree to make contributions to the Fund or pay assessments to the Account, as applicable, that has been established for the association serving the area and may sign on their behalf an agreement which acknowledges that such persons will make such contibutions or pay such assessments.

(g) [Reserved]

(h) *Purchaser assessments.* Each purchaser of burley and flue-cured quota tobacco shall pay an assessment with respect to purchases of all such kind of tobacco marketed by a producer from a farm, including purchases from the association of such tobacco from the 1986 and subsequent crops. Such assessment shall be determined in accordance with section 106A or 106B, as applicable, of the Agricultural Act of 1949, as amended, and shall be paid into the applicable association's Fund or Account.

(i) *Collection and remission of contributions or assessments.* (1) Any producer contribution or assessment due under this section shall be collected at the time of marketing:

(i) From any dealer or warehouseman who acquired the tobacco involved from the producer; or

(ii) If the tobacco involved is marketed by a producer directly to any person outside the United States, from the producer; or

(iii) If the tobacco involved is delivered directly to an association, by such association.

(2) A dealer or warehouseman may deduct the amount of any producer contribution or assessment from the price paid to the producer for such tobacco.

(3) Any purchaser assessment due under this section shall be collected at the time of marketing:

(i) From the dealer or warehouseman who acquired the tobacco involved from the producer; or

(ii) If the tobacco involved is marketed by a producer directly to any person outside the United States, from the producer who may add an amount equal to the purchaser assessment to the price paid by the purchaser for such tobacco.

(4) If tobacco involved is marketed at a warehouse auction, the warehouseman may add an amount equal to the purchaser assessment to the price paid by the purchaser of such tobacco.

(5) All persons who are responsible for collecting any contribution or assessment required by this section shall remit such collections to the applicable association within 15 days of the date on which the tobacco was marketed except as provided in paragraphs (i)(5) (i) and (ii).

(i) Warehousemen who are responsible for collecting any contribution or assessment required by this section shall remit such collections to the applicable association in accordance with the provisions of the loan contact between the association and the warehouseman.

(ii) Dealers who are responsible for collecting any contribution or assessment as required by this section shall remit such collections to the State ASCS office in accordance with Parts 724 through 726 of this title.

(6) Any person who fails to collect and timely remit any collections required by this section shall be subject to a late payment charge. Such late payment shall be calculated and assessed in accordance with Part 1403 of this title.

(j) *Penalty for failure to collect and remit contributions or assessments.* (1) If any person fails to collect and remit any contributions or assessments according to the provisions of this section such person shall be liable, in addition to any amount of contributions or assessments and any late payment charges, to a marketing penalty at a rate equal to 75 percent of the average market price (calculated to the nearest whole cent) for the kind of tobacco for the immediately preceding year on the quantity of tobacco as to which failure occurs. Such a penalty only shall be assessed after the person has been notified of the pending assessment of the penalty and the person has been afforded an opportunity for a hearing with respect to the assessment of the penalty. However, such marketing penalty shall not be assessed if such contributions or assessment are collected and remitted not later than 15 days after the date required by this part.

(2) If a warehouseman fails to collect and remit any contribution or assessment to an association within 15 days after the date provided in the loan contract between the warehouseman and such association, the association shall provide to the State ASC committee for the state in which the warehouseman's business is located a statement of the reason for the failure of the person to timely remit such collection, including the name and address of the warehouse involved, the pounds of tobacco purchased, the date of purchase, and the date the collection was required to be remitted. The association shall submit such facts within 25 days after the applicable due date regardless of whether such assessment or contribution has been remitted to the association.

(3) The State ASC committee shall be responsible for assessing any marketing penalty determined in accordance with paragraph (j)(1) of this section.

(4) The Deputy Administrator may reduce the amount of any marketing penalty for which a person otherwise would be liable in accordance with the provisions of this section.

(5) The marketing penalty provided in this section is in addition to, and not exclusive of, any other remedies that may be available with respect to collection and remission of any contributions or assessments made in accordance with this section.

[47 FR 51556, Nov. 16, 1982, and 48 FR 21110, May 11, 1983, as amended at 49 FR 24374, June 13, 1984; 51 FR 32427, Sept. 12, 1986; 53 FR 43675, Oct. 28, 1988]

§ 1464.11 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in this regulations (7 CFR Part 1464) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control number 0560-0047 and 0560-0076.

[49 FR 2466, Jan. 20, 1984 and 49 FR 23334, June 6, 1984, as amended at 49 FR 27135, July 2, 1984; 50 FR 4493, Jan. 31, 1985]

PART 1468—MOHAIR

Subpart-Payment Program for Mohair (1986–1990)

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AUTHORITY: Secs. 4 and 5, 62 Stat. 1070, as amended, 1072, as amended (15 U.S.C. 714 b and c); secs. 702-708, 68 Stat. 910-912, as amended (7 U.S.C. 1781-1787).

Subpart-Payment Program for Mohair (1986–1990)

SOURCE: 43 FR 9456, Mar. 8, 1978, unless otherwise noted.

PROGRAM OPERATIONS

§ 1468.101 General.

This subpart sets forth the policies, procedures, and requirements governing price support payments by Commodity Credit Corporation (referred to in this subpart as "CCC") for mohair for the 1986, 1987, 1988, 1989, and 1990 marketing years.

[43 FR 9456, Mar. 8, 1978, as amended at 47 FR 15097, Apr. 8, 1982; 51 FR 17612, May 14, 1986]

§ 1468.102 Administration.

The program will be carried out by the Agricultural Stabilization and Conservation Service (referred to in this subpart as "ASCS") under the general supervision and direction of the Executive Vice President of CCC. In the field, the program will be administered through the ASCS State and county offices. ASCS State and county offices do not have authority to modify or waive any of the provisions of this subpart or any amendments or supplements thereto unless the power to modify or waive is expressly included in the pertinent provision.

§ 1468.103 Announcement of price support level.

Pursuant to the National Wool Act of 1954, as amended, the Secretary of Agriculture shall announce a price support level for mohair which has been determined to meet the requirements of the Act for each of the five marketing years, 1986, 1987, 1988, 1989, and 1990. Such announcement shall, to the extent practicable, be made sufficiently in advance of each marketing year as will permit producers to plan their production for such marketing year.

[43 FR 9456, Mar. 8, 1978, as amended at 47 FR 15097, Apr. 8, 1982; 51 FR 17612, May 14, 1986; 52 FR 4277, Feb. 11, 1987; 52 FR 42078, Nov. 3, 1987]

§ 1468.104 Definitions.

In determining the meaning of the provisions of this subpart, unless the context indicates otherwise, words importing the singular include and apply to several persons or things, words importing the plural include the singular, words importing the masculine gender include the femine, and words used in the present tense include the future as well as the present. The following terms shall have the following meanings:

"Deputy Administrator" means the Deputy or Acting Deputy Administrator, State and County Operations, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture.

"Family member" means a person who is (a) a parent or grandparent of the producer; (b) the spouse of the producer; (c) a lineal descendant of the producer or the producer's spouse; (d) the spouse of any lineal descendant of the producer or the producer's spouse; (e) a brother or sister of the producer or the producer's spouse or (f) a spouse of a brother or sister of the producer or the producer's spouse.

"Financing agency" means any bank, trust company, or Federal lending agency. It also includes any other financing institution which customarily makes loans or advances to finance production of goats or mohair.

"Goat" means an Angora goat and the term also includes a kid of an Angora goat.

"Grease mohair" means mohair as it comes from the Angora goat or the kid of an Angora goat before applying any process to remove the natural oils or fats.

"Joint owners" means two or more persons who own the mohair in question, regardless of the special nature of their relationship or how it came into being, and shall include owners in common.

"Joint producers" means two or more producers who are joint owners of mohair, or who are producers of mohair under a caretaking agreement pursuant to which one producer owns the goats and the other producer furnishes labor in connection with mohair production in return for which the producer is entitled to share either in the mohair produced or in the proceeds from the sale of such mohair.

"Local shipping point" means the point at which the producer delivers mohair to a common carrier for further transportation or, if the mohair is not delivered to a common carrier, the point at which the producer delivers it to the marketing agency or a purchaser. The term "common carrier" includes any carrier that serves the public in transporting goods for hire whether or not such carrier is required to be licensed by some Government authority to do so.

"Marketing agency" with reference to mohair means a person who sells a producer's mohair for the producer's account.

"Marketing year" means the period beginning January 1 and ending the following December 31, both dates inclusive.

"Mohair" means the hair of the Angora goat and also includes the hair of a kid of a Angora goat.

"Mohair incentive payment rate" means the percentage required to bring the national average price received by all producers for the sale of mohair up to the incentive price.

"Person" means an individual, partnership, association, business trust, corporation, or any organized unincorporated group of individuals, and includes a State and any subdivision thereof.

"Producer" of mohair means a person who either owns, individually or jointly, the goat from which the mohair is shorn or is a joint producer of the mohair under a caretaking agreement described in paragraph (c) of this section.

"Sales document" means the account of sale, invoice, bill of sale, or other related document prepared by the purchaser evidencing the sale by the producer of shorn mohair to the purchaser.

"Shorn mohair" means grease mohair sheared from a live Angora goat or the kid of an Angora goat. Shorn mohair does not include pelts or mohair shared from pelts, scoured, or dyed mohair or yarn, skeins or other terms which identify the mohair as being other than in its natural greasy state.

"Specified marketing year" is the marketing year which the Department of Agriculture has announced that marketings of mohair by a producer during that year will entitle the producer to a payment under this program.

[43 FR 9456, Mar. 8, 1978, as amended at 50 FR 47033, Nov. 14, 1985; 51 FR 9174, Mar. 18, 1986]

§ 1468.105 Price support payments.

With respect to each specified marketing year, price support payments on shorn mohair marketed in each marketing year will be available to producers in accordance with the provisions of this subpart.

[50 FR 47033, Nov. 14, 1985, and 51 FR 9174, Mar. 18, 1986]

§ 1468.106 Eligibility for payments.

(a) To be eligible for a payment with respect to shorn mohair under this subpart, all requirements of this section must be fulfilled.

(b) Except as provided in § 1468.115, the applicant must be the producer of shorn mohair. In the case of a joint application for payment, each applicant must be a producer of shorn mohair which is marketed in accordance with provisions of § 1468.107(c).

(c) The mohair must have been shorn in the United States.

(d) The producer, or in the case of joint producers at least one of the producers, must have owned the mohair at the time of shearing and must have owned in the United States the goats from which the mohair was shorn for not less than 30 days at any time prior to the filing of the application. Ownership of mohair or goats as used in this paragraph does not include the ownership which is some States is held by a person having a security interest, such as a mortgage or other lien.

(e) Beneficial interest in the mohair must always have been in the producer from the time the mohair was shorn up to the time of its sale. A producer has beneficial interest in mohair:

(1) When the producer owns it and has not authorized any other person to sell or otherwise dispose of it, or (2) when the producer has, by transfer of legal title to such other person or otherwise, authorized another person to sell or otherwise dispose of the mohair but continues to be entitled to the proceeds from any such sale or other disposition thereof. Such beneficial interest is not changed by a mortgage or other lien on the mohair.

(f) Payments shall only be made with respect to bona fide marketings of shorn mohair. The sale of shorn mohair which has been altered in any manner through processing, other than scouring as provided in § 1468.111(a)(3), or any other process or act that results in a mohair product, as determined by the Deputy Administrator, is not eligible for a payment under this subpart.

[43 FR 9456, Mar. 8, 1978, as amended at 50 FR 47033, Nov. 14, 1985; 51 FR 9174, Mar. 18, 1986]

§ 1468.107 Bona fide marketing within a specified marketing year.

(a) Marketing shall be deemed to have taken place in a specified marketing year if, pursuant to a sale or contract to sell in the process of marketing, the last of the following three events, in whatever order they occur, was completed in that marketing year:

(1) Title passed to the buyer;

(2) The mohair was delivered to the buyer (physically or through documents which transfer control to the buyer); and

(3) The last of the factors (price per pound, weight, etc.) needed to determine the total purchase price payable by the buyer is known to the marketing agency, if the applicant markets directly.

In addition the full amount due the producer in connection with the marketing of mohair must be paid to the applicant in cash, merchandise, or services rendered before the producer may include it in the application for payment.

(b) A promissory note or other promise to pay, as well as a check not honored for any reason, shall not be considered as a payment to the producer unless the Deputy Administrator makes a determination that:

(1) The producer acted in good faith in marketing the mohair;

(2) A bona fide marketing occurred;

(3) The mohair was not returned to the producer;

(4) The producer was not aware and had no reason to suspect that the document tendered in payment for the mohair was not worth its face value at the time of acceptance of the document, and

(5) The producer made a diligent effort to obtain payment for the mohair from the purchaser. Notwithstanding the foregoing provisions of this paragraph, the price utilized for the purpose of computing the net sales proceeds under the provisions of § 1468.109 shall not exceed the fair market value of the mohair as determined by the Deputy Administrator.

(c) For the purpose of determining a price support payment, a bona fide marketing shall be deemed to occur when a producer relinquishes title to the shorn mohair in exchange for a specific amount of money per pound of mohair tendered, or for services of merchandise of a specific monetary value as provided in paragraph (d) of this section. A sale of mohair by a producer shall constitute a bona fide marketing if:

(1) The mohair is sold to a person or business which normally purchases grease basis mohair; and

(2) The producer selling the mohair does not sell the mohair to a family member or to any business in which the producer and/or family member has more than a 20 percent interest.

(d) The exchange of mohair for merchandise or services of a nature other than mohair or mohair products will be considered as a bona fide marketing if a definite price for the mohair is established by the parties prior to the exchange. Such price, or whatever other price the Deputy Administrator determines is the fair market value for such mohair, whichever is lower, shall be used for the purpose of computing the net sales proceeds under the provisions of § 1468.109.

(e) The delivery of mohair on consignment to a marketing agency to be sold for the producer's account does not constitute a marketing whether or not a minimum sales price is guaranteed or an advance against the prospective sales price is given by the consignee.

Notwithstanding the foregoing, mohair delivered to a marketing agency on consignment is deemed to have been marketed if the marketing agency:

(1) Has guaranteed a minimum sales price;

(2) Is unable to sell the mohair for more than the minimum sales price; and

(3) Takes possession of the mohair at the minimum sales price with the producer's consent.

The producer shall be deemed to have consigned the mohair when the mohair has been transferred to a marketing agency and the producer provides that such agency shall market the mohair and that the producer shall be entitled to the proceeds of such marketing.

[43 FR 9456, Mar. 8, 1978, as amended at 50 FR 47033, Nov. 14, 1985; 51 FR 9174, Mar. 18, 1986; 52 FR 4277, Feb. 11, 1987; 52 FR 42078, Nov. 3, 1987]

§ 1468.108 Rate of payment.

At the end of each specified marketing year the mohair price support payment rate shall be determined and announced by the Executive Vice President, CCC, or the Executive Vice President's designee.

[50 FR 47034, Nov. 14, 1985, and 51 FR 9174, Mar. 18, 1986]

§ 1468.109 Computation of payment.

(a) The amount of the payment due to a producer shall be computed by applying the rate of payment to the net sales proceeds for the mohair marketed during the specified marketing year.

(b) Except as provided in § 1468.111(a)(6) with respect to a guaranteed minimum sales price, the net sales proceeds shall be determined by deducting from the gross sales proceeds of the mohair all marketing expenses, such as any charges paid by or for the account of the producer for transportation, handling (including commissions), grading, scouring, or carbonizing. The figure so arrived at will express the net proceeds received by the producer at the farm, ranch, or local shipping point. Charges for furnishing bags or storing the mohair, as well as any other charges not directly related to the marketing of the mohair, such as interest on advances, shall not be considered marketing charges.

(c) All applications filed by a producer in the same county office for payments due on mohair marketed during the specified marketing year shall be considered together for the purpose of determining the total amount of payment due. All such applications filed in different county offices may be considered together in determining such total payment.

§ 1468.110 Preparation of application.

(a) *Preparation.* The application for payment on the sale of mohair shall be prepared on Form CCC-1155, "Application for Payment (National Wool Act)." Marketing agencies may assist producers in filling out applications by inserting the information on sales of mohair and sending the sales documents to the appropriate ASCS county office, but the producer must sign the application and is responsible for the requirements as to the time and manner of filing the application. If the producer paid marketing charges not shown on the sales document, such charges shall be considered with the marketing charges shown on the sales document in arriving at the net proceeds.

(b) *Supporting documents.* The application shall be supported by the original sales document evidencing the sale of mohair. The processing of shorn mohair by a process or act which, as determined by the Deputy Administrator, produces a mohair product, shall make the mohair ineligible for a price support payment. Payment shall not be made on marketings of mohair products, including items identified as yarn, mohair yarn, skeins, or novelty items. Trimming, skirting, and cleaning by scouring, provided the grease basis weight is established, does not disqualify the mohair for a price support payment.

(c) *Original sales document retained.* If the applicant does not wish the original sales document to remain with the ASCS county office, a photostat, carbon, or other copy of the original document may be submitted. However, the applicant must show the original document to the ASCS county office where the statements on the copy will be confirmed by comparison with the original. The original sales document will be appropriately stamped or marked to indicate that it had been used in support of an application for payment under this program and will be returned to the applicant, who shall retain it in accordance with § 1468.122.

(d) *Practice of issuing carbon or photostat copies.* If it is the practice of the person or firm preparing the sales document to furnish a carbon or other copy to the seller in the place of the original, the producer may submit that copy in support of his application, provided the copy bears a signature, in accordance with § 1468.111 (a)(10), of the person or of the representative of the firm preparing the original sales document. Such copy shall be treated as an original for the purposes mentioned in this section.

(e) *Lost or destroyed sales document.* If the original sales document has been lost or destroyed, the applicant may submit a copy, certified by the buyer or the applicant's marketing agency, and such certified copy shall be treated as an original for the purposes mentioned in this section.

[43 FR 9456, Mar. 8, 1978, as amended at 50 FR 47034, Nov. 14, 1985; 51 FR 9174, Mar. 18, 1986]

§ 1468.111 Contents of sales documents.

The sales documents attached to each application for payment must contain a final accounting and meet the requirements of paragraph (a) or (b) of this section, for the mohair covered by the sales document. Contracts to sell as well as tentative or pro forma settlements will not be acceptable as sales documents meeting such requirements. Except as provided in § 1468.115, sales documents must cover mohair sold by the producer.

(a) *Sales other than at farm, ranch, or local shipping point.* Each sales document, except a document which involves a direct sale of mohair at the producer's farm, ranch, or local shipping point, must be prepared by either. The purchaser, in which case the original signature of the purchaser or the signature of an authorized representative of the purchaser must be entered on the sales document, or the applicant's marketing agency. Each sales document must include at least the following:

(1) Name and address of seller.

(2) Date of sale. In case the producer's shipment to a marketing agency is sold in parts within a marketing year, the date when final settlement is made within that marketing year for the mohair that was sold within that marketing year may be shown on the sales document as the date of sale instead of the various dates on which the sales actually took place.

(3) The net weight of mohair sold on a grease basis. If the mohair was sold as scoured, the original grease weight must be shown as well as the scoured weight.

(4) Except as otherwise provided in paragraph (a)(5) of this section, the gross sales proceeds or sufficient information from which the gross sales proceeds can be determined.

(5) Marketing deductions, if any (see § 1468.109(b)), except as otherwise provided in this subparagraph. The marketing deductions may be itemized or they may be shown on the sales document as a composite figure for all marketing charges with an explanation of what services are included in that figure. If it is the practice of a marketing agency to show on the sales document only the net proceeds after marketing deductions, the gross sales proceeds and the amount of the marketing deductions need not be shown, provided the sales document contains a statement reading substantially as follows:

> The net sales proceeds after marketing deductions shown herein were computed by deducting from the gross sales proceeds charges for the following marketing services:
>
> ____
>
> Details of these charges will be furnished on request.

All the services for which deductions are made shall be enumerated in the blank space indicated. If a sales document shows charges without specifying their nature, they will be considered marketing charges and will thus diminish the net proceeds on which the payment is computed. Association dues are to be considered marketing deductions if they include compensation for marketing services.

(6) Net proceeds after marketing deductions. If a sales document contains a figure for net proceeds after marketing deductions computed for a location other than the producer's farm, ranch, or local shipping point, the person preparing the sales document shall show thereon the name of the location for which the net proceeds have been computed. If a marketing agency has guaranteed a minimum sales price for the mohair, is unable to sell the mohair for a higher price, and therefore settles with the producer on the basis of such guaranteed minimum price, the sales document should be on the basis of guaranteed minimum price, regardless of a lower price at which the agency may sell the mohair. In such a case, the marketing agency may indicate on the sales document that the price is the guaranteed minimum sales price.

(7) Additional deductions, such as charges for bags, storage, interest, association dues which do not include compensation for marketing services, or other charges not directly related to the marketing of the mohair.

(8) The amount paid to the seller of the mohair on a grease basis.

(9) Name and address of the purchaser or marketing agency, whichever issues the sales document.

(10) *Signature.* The sales document must bear a handwritten signature by or on behalf of the person or firm issuing the sales document. Acceptable signatures will consist of at least one initial or name by which the person is generally known, followed by the last name in full. A carbon impression or facsimile of a handwritten signature is not acceptable.

(11) A sales document issued by a marketing agency and covering sales made on various dates within a specified marketing year shall contain a statement that the mohair was marketed during that marketing year.

(12) A sales document covering mohair exchanged for merchandise or services (§ 1468.107(d)), shall contain a clear statement that the transaction is an exchange rather than a cash sale.

(b) *Sales at farm, ranch, or local shipping point.* Each sales document involving a sale of mohair at the producer's farm, ranch or local shipping point which is attached to an application for a price support payment shall be prepared by the purchaser with the original signature of the purchaser and must contain at least the following:

(1) Name and address of seller.

(2) Date of sale.

(3) The net weight of mohair sold on a grease basis. If the mohair was sold as scoured mohair, the original grease weight must be shown as well as the scoured weight.

(4) Net amount received by the seller for the mohair at the farm, ranch, or local shipping point.

(5) Any applicable nonmarketing deductions, such as charges for bags, storage, interest, association dues which do not include compensation for marketing services, or other charges not directly related to the marketing of the mohair.

(6) Name and address of the purchaser.

(7) *Signature.* The sales document must bear a handwritten signature by or on behalf of the person or firm issuing the sales document. Acceptable signatures will consist of at least one initial or name by which the person is generally known, followed by the last name in full. A carbon impression or facsimile of a handwritten signature is not acceptable.

(8) A sales document covering mohair exchanged for merchandise or services (§ 1468.107(d)) shall contain a clear statement that the transaction is an exchange rather than a cash sale.

[43 FR 9456, Mar. 8, 1978, as amended at 50 FR 47034, Nov. 14, 1985; 51 FR 9174, Mar. 18, 1986]

GENERAL PROVISIONS

§ 1468.112 Filing application for payment.

(a) *Place of filing.* Applications for payment shall be filed by the applicant with the ASCS county office serving the county where the headquarters of the producer's farm or ranch, as the case may be, is located. If the producer has more than one farm or ranch, with headquarters in more than one county, separate applications for payments shall be filed with the ASCS county office serving each such headquarters covering only the mohair produced at each such farm or ranch, except that if the producer sells the entire clip of mohair in a single sale or if the entire clip is sold for the producer's account by one marketing agency, the producer may file the application(s) for payment on mohair in any one of those ASCS county offices. In the event all business transactions are conducted from the producer's residence or office and the farm or ranch has no other headquarters, the office or residence may be considered the farm or ranch headquarters.

(b) *Time of filing.* An application for payment shall be filed as soon as possible after completion of the producer's sales of mohair in a specified marketing year, but in no event shall an application be filed later than 3 years after the end of that specified marketing year.

§ 1468.113 Signature of applicant.

No payment will be made unless an application for payment on mohair is signed. Each person who signs an application for payment in a representative or fiduciary capacity as agent, attorney-in-fact, officer, executor, etc., must be properly authorized to sign in such capacity.

§ 1468.114 Joint applicants.

When the applicant for a mohair payment is a joint producer of the mohair, all of the joint producers (except those who sign a release as provided below in this section) must sign an application based on the sale of such mohair regardless of whether the mohair was divided among such producers prior to sale or was sold without division. CCC will not be responsible for a division among the applicants of a payment made to all of them jointly. When the application shows such joint production and one or more of the joint producers refuses to join in the application, if each such joint producer signs a form prescribed by CCC releasing CCC from any obligation to make a payment to such a joint applicant, CCC shall make payment of the amount due the remaining joint producers who sign the application. Such release(s) shall be attached to the application. When any joint producer is entitled to join in an application but fails to do so, and the application does not show this interest as a joint producer, the producer shall have no claim against CCC for any portion of the payment made pursuant to the application.

§ 1468.115 Disability.

(a) If a producer who is otherwise eligible to receive a payment under this subpart dies, disappears, or is declared incompetent, before marketing the mohair or before filing an application, the successors or representatives authorized to receive payment in the order of precedence set forth in part 707 of this title may complete the eligibility requirements and make application for such payment on Form CCC-1155. The applicant shall also file Form ASCS-325, "Application for Payment of Amounts Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent," in accordance with Part 707 of this title.

(b) If a producer who earned a payment under this subpart and filed an application therefor dies, disappears, or is declared incompetent, either before CCC has issued a draft in payment or after CCC has issued a draft in payment but before the draft is negotiated, the successors or representatives authorized to receive such payment in the order of precedence set forth in Part 707 of this title may apply therefor on Form ASCS-325, in accordance with Part 707 of this title.

(c) If an Indian who is incompetent earned a payment under this subpart, an application therefor may be filed on the Indian's behalf by the Superintendent of the Indian Field Service of the reservation on which the Indian resides or by the authorized representative of such Superintendent. Such application for payment will be filed in the ASCS county office where the headquarters of the Indian's farm or ranch is located.

(d) In all other cases of disability, including bankruptcy and dissolution, payments will be made to a representative only in accordance with specific directions issued by CCC.

§ 1468.116 Payment.

(a) Payment will be made under this subpart after the ASCS county office has reviewed the application and attached supporting documents and has approved payment in whole or in part, and after the appropriate rate of payment for the specified marketing year has been announced by the Department of Agriculture.

(b) Payments under this subpart shall be made only on the basis of the net sales proceeds received for mohair. No payment shall be made on that part of any sale which has been canceled or on the basis of prices or weights which have been fraudulently increased for the purpose of obtaining higher payments. No payment shall be made on sales to a mohair growers association (as distinguished from a cooperative marketing association) by its producer-members on the basis of net sales proceeds in excess of the fair market value of the mohair (grease basis) as determined by CCC.

(c) Notwithstanding any other provision of this part, price support payments shall not be made with respect to that portion of the sales proceeds received by a producer for eligible mohair which is based on sales prices in excess of the maximum sales price per pound for mohair as determined by the Deputy Administrator. The Deputy Administrator shall determine the maximum sales price per pound for mohair marketed in each marketing year on the basis of the national average market price for mohair computed for each marketing year. The maximum sales price shall be an amount which the Deputy Administrator determines will encourage the continued domestic production of mohair at prices fair to both producers and consumers in a manner which would assure a viable domestic mohair industry. The maximum sales price shall be publicly announced by the Department of Agriculture at the end of each marketing year for mohair.

(d) If it is determined by the ASCS State or county office that an applicant knowingly made a false statement in the application, no payment shall be made with respect to such application.

(e) If CCC subsequently determines that available evidence does not sustain the applicant's right to all or any part of the payment made, the amount of the payment not so sustained shall immediately become due and repayable to CCC, and CCC may, without limitation upon any of the Government's rights in the matter, deduct such amount from any other payment due the applicant under this subpart. If the right to such amount becomes involved in a lawsuit between the Government and the applicant or the assignee, the applicant or the assignee shall have the burden of proving that the applicant was entitled to such amount.

(f) If the ASCS county office rejects in whole or in part an application for payment on mohair, or, after a payment has been made, determines that the available evidence does not sustain the applicant's right to the payment or any part thereof, the ASCS county office shall mail a notice to the applicant, or, in the case of a joint application, to each applicant, that the application has been rejected, specifying the reason therefor, or that the available evidence does not sustain the applicant's right to the payment or any part thereof, as the case may be.

[43 FR 9456, Mar. 8, 1978, as amended at 52 FR 4277, Feb. 11, 1987; 52 FR 42078, Nov. 3, 1987]

§ 1468.117 Deductions for promotion.

If the Department of Agriculture has approved deductions for an advertising and sales promotion program in accordance with section 708 of the National Wool Act of 1954, as amended, the rate of such deductions for the specified marketing year will be announced and the appropriate deduction will be made from each payment due under this subpart for such specified marketing year.

§ 1468.118 Set off.

If the county office records show that the producer is indebted to CCC, to any other agency within the U.S. Department of Agriculture, or to any other agency of the United States, such indebtedness will be set off against the payment due to the producer in accordance with Part 13 of this title.

§ 1468.119 Liens on goats or mohair.

If a producer grants a lien on the goats or mohair, such lien shall not be deemed to extend to payments made to the producer pursuant to this subpart.

§ 1468.120 Requests for reconsideration and appeals.

Any applicant who is notified that the application has been rejected in whole or in part, or that any other action has been taken by the ASCS county office which unfavorably affects a payment, may obtain reconsideration and review of the determination in accordance with Part 780 of this title. In the request for reconsideration, the applicant shall identify the application by number and date. When a joint application is involved, the request for reconsideration and review may be filed by all applicants jointly or by any of the applicants, in which case it shall be considered a request in behalf of all the joint applicants.

§ 1468.121 Assignments.

(a) *Form.* An assignment of a payment due or to become due under this subpart on mohair may be given to a financing agency or a mohair marketing agency as security for cash advanced or to be advanced on goats or mohair. The assignee shall not reassign such payments. An assignment may only include payments due or to become due on the sale of mohair for a specified marketing year and must include all such payments due and to become due for that specified marketing year. The assignment shall be executed by the producer, or in the case of joint producers by all such producers, on Form CCC-1157 "Assignment of Payment Under the National Wool

Act of 1954." The producer's signature shall be witnessed by a member of the county or community ASC committee, for the county where the farm is located, or by an employee of the county committee.

(b) *Payment.* CCC will make payment pursuant to an accepted assignment unless the ASCS county office is furnished evidence that the assignment has been released by the assignee.

§ 1468.122 Records and inspection thereof.

(a) The applicant for a payment under this subpart, as well as the marketing agency and any other person who furnishes evidence to such applicant for use in connection with the application, shall maintain books, records, and accounts pertaining to the marketing of the mohair on which the application is based, for 3 years following the end of the specified marketing year during which the marketing took place. The applicant shall maintain books, records, and accounts pertaining to the production and sheering of mohair, with respect to which the applicant applies for payment, for 3 years following the end of the specified marketing year during which the marketing took place.

(b) With respect to any application for payment filed after the end of the specified marketing year, instead of maintaining the books, records, and accounts for the time specified in paragraph (a) of this section, such books, records, and accounts shall be maintained for 3 years following the date on which the application is filed.

(c) At all times during the regular business hours, authorized representatives of CCC or USDA shall have access to the premises of the applicant, of the marketing agency, and of the person who furnished evidence to an applicant for use in connection with the application, in order to inspect, examine, and make copies of the books, records, and accounts, and other written data as specified in paragraphs (a) and (b) of this section.

§ 1468.123 Violations of program.

(a) Whoever issues a false sales document or otherwise acts in violation of the provisions of this program so as to
enable an applicant to obtai
ment to which such person is
tled, shall become liable to
any payment which CCC m
made in reliance on such sa
ment or as a result of suc
action.

(b) The issuance of a false s
ument or the making of a fal
ment in an application for pay
other document, for the purpo
abling the applicant to obtai
ment to which such person is
tled, will subject the person
such document or making suc
ment to liability under applica
eral civil and criminal statutes.

§ 1468.124 Forms.

Form CCC-1155, "Applicat
Payment (National Wool Act)
CCC-1157, "Assignment of F
Under the National Wool Act o
Form ASCS-325, "Application
ment of Amounts Due Persor
Have Died, Disappeared, or Ha
Declared Incompetent," and
forms issued by the U.S. Dep
of Agriculture for use in con
with this program may be o
from ASCS county offices.

§ 1468.125 Authorization by E
Vice President, CCC, or other

If the applicant is unable to
the documentary evidence of
quired by this subpart, the Ex
Vice President, CCC, or the
Administrator, State and Coun
erations, ASCS, may authori
submission of other evidence wh
tablishes to the satisfaction of
thorizing official the informat
quired by § 1468.111.

§ 1468.126 Expiration of time limit

Whenever the final date for fil
application falls on a Sat
Sunday, national holiday, or Sta
iday, or on any other day on whi
appropriate ASCS State or c
office is not open for the trans
of business during normal w
hours, the time for filing the a
tion shall be extended to the cl
business on the next working d
the filing is by mail, it shall be c

ered timely if it is postmarked by midnight of such next working day.

§ 1468.127 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in these regulations (7 CFR Part 1468) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Number 0560–0023.

[50 FR 47034, Nov. 14, 1985, and 51 FR 9174, Mar. 18, 1986]

PART 1470—COMMODITY CERTIFICATES, IN KIND PAYMENTS, AND OTHER FORMS OF PAYMENT

Sec.
1470.1 Applicability.
1470.2 Payments in lieu of cash payments.
1470.3 Payments to persons with outstanding CCC loans.
1470.4 Commodity certificates.
1470.5 In kind payments.
1470.6 Assignments.
1470.7 Miscellaneous provisions.

AUTHORITY: Secs. 4 and 5 of the Commodity Credit Corporation Charter Act, as amended; 62 Stat. 1070, as amended, 1072 (15 U.S.C. 714b and 714c); secs. 101A, 103A, 105C, 107C, 107D, 107E, and 405 of the Agricultural Act of 1949, as amended; 99 Stat 1419, as amended, 1407, as amended, 1395, as amended, 1446, 1383, as amended; 63 Stat. 1054, as amended (7 U.S.C. 1441-1, 1444-1, 1444b, 1444b-2, 1444b-3, 1444b-4, 1445d, and 1425).

SOURCE: 51 FR 36921, Oct. 16, 1986. Redesignated at 53 FR 20290, June 3, 1988 (interim), 53 FR 47659, Nov. 25, 1988 (final), unless otherwise noted.

§ 1470.1 Applicability.

This part shall be applicable to payments and loans made in accordance with the programs administered by the Commodity Credit Corporation (CCC) or the Agricultural Stabilization and Conservation Service (ASCS) as determined and announced by the Secretary of Agriculture or a designee of the Secretary. The definitions of the terms applicable to 7 CFR Part 713 set forth at § 713.3 also shall be applicable to this part, except that the term "commodity" shall mean any agricultural commodity.

§ 1470.2 Payments in lieu of cash payments.

(a) CCC will, in accordance with applicable program provisions, make payments in a form other than in cash to persons who otherwise are eligible to receive a cash payment from CCC. Further, subject only to statutory prohibition and notwithstanding any provisions of the contract to participate in a program administered by CCC or ASCS, CCC may: at its option, make payments in a form other than in cash.

(b) As determined by CCC, payments in a form other than in cash may be made in the following manner:

(1) By delivery of a commodity to a person at a warehouse or other similar facility;

(2) By transfer of negotiable warehouse receipts;

(3) By the issuance of certificates which CCC shall redeem in accordance with this part;

(4) By the acquisition and use of commodities pledged as collateral for CCC price support loans;

(5) By the use of commodities owned by CCC; and

(6) By such other methods as CCC determines appropriate, including methods to enable the producer to receive payments in order to assure that the producer receives the same total return as if the payments had been made in cash.

(c) The value of the payments made in any manner set forth in paragraph (b) shall be determined by CCC.

(d) Notwithstanding any other provision of this part, CCC may, with respect to producers who are members of a cooperative marketing association which has been determined in accordance with Part 1425 of this title to be eligible to receive price support on behalf of its producer-members, enter into agreements with such producers and such cooperatives to facilitate the making of payments to such producers. Such agreements may include a provision which allows a producer to make available for the use of the cooperative the value of the non-cash payment which would otherwise be made to the producer.

§ 1470.3 Payments to persons with outstanding CCC loans.

(a) Persons with outstanding CCC loans who are eligible to receive payments from CCC, including a person authorized to receive a payment on behalf of another person, may be required to liquidate such loans in accordance with this section in order to be eligible to receive a payment authorized by § 1470.2.

(b) A person with an outstanding CCC loan must, unless otherwise agreed upon by the person and CCC, redeem and sell to CCC a quantity of the commodity pledged as collateral for a CCC loan, as determined by CCC, in an amount equal in value to the value of the payment which would otherwise be made to such person. If the person has more than one outstanding CCC loan, CCC may, by contract or otherwise, prescribe which loan collateral the person shall be required to redeem in order to receive payment. The purchase price shall be equal to the cost of liquidating the loan or the portion of the loan for which the quantity of the commodity sold to CCC is pledged as collateral, except that, in the case of a special producer storage loan or a farmer-owned reserve loan, the purchase price will not include the amount of any unearned advance storage payments received with respect to the redeemed collateral. After redemption and the subsequent sale to CCC of the commodity pledged as collateral for such CCC loan, CCC shall make available to the person a like quantity of the commodity.

§ 1470.4 Commodity certificates.

(a) *General.* CCC may issue commodity certificates as a form of payment. Commodity certificates will bear a dollar denomination. Such certificate may be transferred, exchanged for the inventory of CCC (including the receipt in accordance with paragraph (e) of this section of loan collateral by a person to whom a loan secured by such collateral is made): or exchanged for cash, as provided for in this section. Commodity certificates shall be subject to the provisions of this part, and to any terms, conditions and restrictions provided on the certificate, which are incorporated by reference herein.

(b) *Liens, encumbrances, and State law.* (1) The provisions of this section or the commodity certificates shall take precedence over any state statutory or regulatory provisions which are inconsistent with the provisions of this section or with the provisions of the commodity certificates.

(2) Commodity certificates shall not be subject to any lien, encumbrance, or other claim or security interest, except that of an agency of the United States Government arising specifically under Federal statute.

(3) The provisions of this paragraph (b) shall apply without regard to the identity of the holder of the certificate.

(c) *Transferability.* Any person may transfer a commodity certificate to any other person. However, any such transfer must be in the full amount of the certificate, and can be effected only by restrictive endorsement on the back of the certificate, showing the name of the transferee and the date of the transfer, and signed by the transferor. CCC will not honor any certificate bearing any endorsement to "bearer" or any other nonrestrictive endorsement, or otherwise transferred in a manner contrary to the regulations contained in this section. The person who submits a commodity certificate to CCC shall endorse the certificate to CCC.

(d) *Exchange of commodity certificate for CCC-owned commodities*—(1) *General.* Except as otherwise provided in this paragraph and in paragraphs (f) and (g) of this section, any holder of a commodity certificate may exchange such certificate, by itself or together with other commodity certificates, for such commodities as are made available by CCC by endorsing and submitting the certificate to CCC. If a person submits commodity certificates for exchange in order that the person would be eligible to receive a quantity of a commodity which includes less than an entire unit in which the commodity is stored (e.g., less than an entire bale of cotton or an entire barrel of honey): (i) Such person may forfeit the partial unit of the commodity to CCC, or (ii) CCC may issue a check to such person for the partial unit of the commodity or permit such person to purchase the remainder of such unit at a price determined by CCC. A person may obtain information regarding commodities available for exchange and the procedure for exchange from Kansas City Commodity Office, ASCS-USDA, Kansas City, MO 64141-0205.

(2) *Minimum quantities.* A holder of an amount of commodity certificates sufficient to acquire a carload lot, or other quantity as may be determined by CCC, may present such amount for exchange at any time on or before the expiration date of such certificates. A holder who is permitted to exchange the certificate for CCC-owned commodities but who does not possess commodity certificates in the amount specified in the preceding sentence may, not to exceed once during a calendar month, submit such certificates to CCC. CCC will, at CCC's option, pay such holder by check in the amount of the certificate or transfer to such holder title to commodities owned by CCC.

(3) *CCC-owned commodities stored by a person who submits commodity certificates to CCC.* CCC may require or permit holders of commodity certificates to exchange such certificates for commodities owned by CCC which are stored by such holder, without making such commodities or kinds of commodities available to other holders of commodity certificates.

(4) *Valuation.* Except as otherwise may be announced by CCC, CCC will determine the value of CCC-owned commodities made available to holders of commodity certificates.

(5) *Transfer of title.* Title to commodities owned by CCC which are transferred to a person who submits commodity certificates to CCC shall be transferred in store, except as may be determined and announced by CCC. The person who submits certificates to CCC shall be responsible for all costs incurred in transferring title to the commodity, except as specifically provided by CCC. The transfer of title to such commodities shall occur without regard to any State law or any claim of lien against the commodity or proceeds thereof which may be asserted by any creditor except agencies of the U.S. Government whose lien arises specifically under Federal statute.

(6) *Expiration date.* CCC may, at its option, discount or refuse to accept any commodity certificate presented for exchange after the expiration date stated on the certificate.

(e) *Use of commodity certificates to receive loan collateral*—(1) *General.* Except as otherwise provided in this paragraph and in paragraphs (f) and (g) of this section, any holder of a commodity certificate may use such certificate to receive commodities pledged as collateral for CCC loans made to such person, at any time on or before the expiration date stated on the certificate. A holder of a commodity certificate who wishes to receive a quantity of a commodity pledged by such person as collateral for a CCC loan in exchange for a certificate shall redeem and sell to CCC a quantity of the commodity equal in value to the dollar denomination of the certificate, as determined by CCC. The purchase price shall be equal to the cost of liquidating the loan or the portion of the loan for which the quantity of the commodity sold to CCC is pledged as collateral, except that, in the case of a special producer storage loan or a farmer-owned reserve loan, the purchase price will not include the amount of any unearned advanced storage payments received with respect to the redeemed loan collateral. Upon submission of the certificate, which is endorsed to CCC, to the county ASCS office which issued the loan, the holder of a commodity certificate will receive the quantity of the commodity which has been sold to CCC. Except as otherwise determined by CCC, if the holder of such certificate does not have commodities pledged as collateral for CCC loans equal in value to the dollar denomination of the certificate, as determined by CCC, CCC will, at CCC's option and after the producer has submitted the certificate, pay the difference to the person by check or in the form of a new commodity certificate.

(2) *Ineligible commodities.* No person may use a commodity certificate to receive a quantity of tobacco, peanuts, or extra long staple cotton

pledged as collateral for a CCC loan. No person may, before August 1, 1986, use a commodity certificate to receive a quantity of upland cotton pledged as collateral for a CCC loan.

(f) *Cash redemption start date.* (1) The person to whom a generic certificate is issued which has a date entered in block D may submit such certificate, endorsed to CCC, at the issuing county ASCS office for payment by check in the amount of the certificate on or after the date entered in block D through the expiration date of the certificate. Such person may not exchange the certificate for commodities owned by CCC, except as otherwise agreed upon between such person and CCC.

(2) The person to whom a generic certificate is issued which has an entry of "S/H" in block D may exchange such certificate for commodities owned by CCC.

(3) The person to whom a commodity specific certificate is issued which has a date entered in block D may submit such certificate, endorsed to CCC, to the Kansas City Commodity Office for the specific commodity entered in block C beginning on the date entered in block D through the expiration date of the certificate. Such certificate may not be exchanged for cash, except as otherwise agreed on by CCC.

(4) All other certificates may be transferred and exchanged as determined and announced by CCC.

(g) *"Generic" and commodity-specific commodity certificates*—(1) *General.* If a commodity certificate indicates that it is a "generic" certificate, such certificate may, subject to the provisions of paragraphs (a) through (f) of this section, be exchanged for any commodity made available by CCC or, as appropriate, used to receive a quantity of any commodity which serves as collateral for a CCC loan. If a certificate is not a "generic certificate", such certificate may be exchanged for the commodity specified on the certificate, except as may be determined and announced by CCC.

(2) *Payments to first handlers, payments to producers who agree to forego obtaining loans, additional yield payments and inventory protection payments.* Notwithstanding any othe provision of this section, a certificat issued as payment to first handlers o cotton, as payment to upland cotto producers who agree to forego obtaining price support loans, or as an additional yield payment to producers o upland cotton, as determined by CCC in accordance with section 103A(a)(5)(D)(ii), 103A(b), an 506(b)(2), respectively, of the Agricultural Act of 1949, as amended, may no be exchanged for CCC-owned uplan cotton until after the expiration o five months following the month i which such certificate is issued. Certificates issued as payments which ar determined to be necessary to make raw cotton in inventory on August 1 1986 available at competitive prices a determined by CCC in accordance with section 103A(a)(5)(D)(ii) of the Agricultural Act of 1949, as amended, may be exchanged for CCC-owned upland cotton only during such period or periods as may be determined and announced by CCC.

(3) *Commodities not available in CCC inventory.* Notwithstanding any other provision of this section, if a person submits a commodity specific certificate to CCC in exchange for a quantity of such commodity and CCC determines it is not possible to make such commodity available, CCC may: (i) Require such person to exchange the commodity specific certificate for a generic certificate; or (ii) refuse to accept submission of such certificate until CCC is able to make available a quantity of the commodity specified on such certificate.

(h) CCC, at its option, may discount or refuse to accept any certificate made, transferred, or submitted in violation of this section.

[51 FR 36921, Oct. 16, 1986, as amended at 51 FR 43580, Dec. 3, 1986; 52 FR 45607, Dec. 1, 1987]

§ 1470.5 In kind payments.

(a) Subject to the provisions of §§ 1470.2 and 1470.3, CCC may make payments in the form of commodities. Quantities of commodities made available as payment shall be based upon the value of the commodity, as determined by CCC. Such quantity may be adjusted by CCC to reflect the location, quality, and other similar factors which CCC determines to affect the value of the commodity.

(b) The transfer of title to commodities made available in accordance with paragraph (a) of this section shall be in store, except as determined by CCC, and shall be made without regard to any State law or any claim of lien against the commodity, or proceeds thereof, which may be asserted by any creditor except agencies of the U.S. Government whose lien arises specifically under Federal statute. The recipient of such commodities shall be responsible for all costs incurred in transferring title to the commodity, except as specifically provided by CCC.

§ 1470.6 Assignments.

Notwithstanding any other provision of this chapter, a payment made under this part may not be the subject of an assignment, except as determined and announced by CCC.

§ 1470.7 Miscellaneous provisions.

Except as determined by CCC, the following provisions of this title shall apply to this part:

(a) Part 13, Setoffs and Withholding.

(b) Part 707, Payments Due Persons Who Have Died, Disappeared, or Been Declared Incompetent.

(c) Part 718, Determination of Acreage and Compliance.

(d) Part 780, Appeal Regulations.

(e) Part 790, Incomplete Performance Based Upon Actions or Advice of an Authorized Representative of the Secretary.

(f) Part 791, Authority to Make Payments When There has been a Failure to Comply Fully with the Program.

(g) Part 795, Payment Limitation.

(h) Part 796, Denial of Program Eligibility for Controlled Substance Violations.

(i) Part 1403, Interest on Delinquent Debts.

(j) All other parts of the Code of Federal Regulations which are made applicable to this part.

PART 1472—WOOL

Subpart-Payment Program for Shorn Wool and Unshorn Lambs (Pulled Wool) (1986–1990)

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AUTHORITY Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714b and c); secs. 702-708, 68 Stat. 910-912, as amended (7 U.S.C. 1781-1787).

Subpart-Payment Program for Shorn Wool and Unshorn Lambs (Pulled Wool) (1986-1990)

SOURCE: 43 FR 9462, Mar. 8, 1978, unless otherwise noted.

PROGRAM OPERATIONS

§ 1472.1501 General.

This subpart sets forth the policies, procedures, and requirements governing price support payments by the Commodity Credit Corporation (referred to in this subpart as "CCC"), for shorn wool and unshorn lambs (pulled wool) for the 1986, 1987, 1988, 1989, and 1990 marketing years.

[43 FR 9462, Mar. 8, 1978, as amended at 47 FR 16162, Apr. 15, 1982; 51 FR 17613, May 14, 1986]

§ 1472.1502 Administration.

The program will be carried out by the Agricultural Stabilization and Conservation Service (referred to in this subpart as "ASCS") under the general supervision and direction of the Executive Vice President of CCC. In the field, the program will be administered through the ASCS State and county offices. ASCS State and county offices do not have authority to modify or waive any of the provisions of this subpart or any amendments or supplements thereto unless the power to modify or waive is expressly included in the pertinent provisions.

§ 1472.1503 Announcement of price support level.

Pursuant to the National Wool Act of 1954, as amended, the Secretary of Agriculture shall announce a price support level for wool which has been determined to meet the requirements of the Act for each of the five marketing years, 1986, 1987, 1988, 1989, and 1990. Such support price level shall, to the extent practicable, be announced sufficiently in advance of each marketing year as will permit producers to plan their production for such marketing year.

[43 FR 9462, Mar. 8, 1978, as amended at 47 FR 16162, Apr. 15, 1982; 51 FR 17613, May 14, 1986; 52 FR 4277, Feb. 11, 1987; 52 FR 42078, Nov. 3, 1987]

§ 1472.1504 Definitions.

In determining the meaning of the provisions of this subpart, unless the context indicates otherwise, words importing the singular include and apply to several persons or things, words importing the plural include the singular, words importing the masculine gender include the feminine, and words used in the present tense include the future as well as the present. The following terms shall have the following meanings:

"Deputy Administrator" means the Deputy or Acting Deputy Administrator, State and County Operations, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture.

"Family member" means a person who is (a) a parent or grandparent of the producer; (b) the spouse of the producer; (c) a lineal descendant of the producer or the producer's spouse; (d) the spouse of any lineal descendant of the producer or the producer's spouse; (e) a brother or sister of the producer or the producer's spouse or (f) a spouse of a brother or sister of the producer or the producer's spouse.

"Financing agency" means any bank, turst company, or Federal lending agency. It also includes any other financing institution which customarily makes loans or advances to finance production of sheep, lambs, or wool.

"Grease wool" means wool as it comes from the sheep or lambs before applying any process to remove the natural oils or fats.

"Joint owners" means two or more persons who own the wool or lambs in question, regardless of the special nature of their relationship or how it came into being, and shall include owners in common.

"Joint producers" means two or more producers who are joint owners of shorn wool or unshorn lambs, or who are producers of shorn wool or unshorn lambs under a caretaking agreement pursuant to which one producer owns the sheep or lambs and the other producer furnishes labor in connection with lamb or wool production in return for which the producer is entitled to share either in the wool or lambs produced or in the proceeds from the sale of such wool or lambs.

"Lamb" means a young ovine animal which has not cut the second pair of permanent teeth. The term includes animals referred to in the livestock trade as lambs, yearlings, or yearling lambs.

"Liveweight" is the weight of live lambs which a producer purchases or sells. In the event the price for the lambs is based on weight, the weight actually used in determining the total amount payable shall be considered the liveweight.

"Local shipping point" means the point at which the producer delivers wool to a common carrier for further transportation, or if the wool is not delivered to a common carrier, the point at which a producer delivers it to the marketing agency or a purchaser. The term "common carrier" includes any carrier that serves the public in transporting goods for hire whether or not such carrier is required to be licensed by some Government authority to do so.

"Marketing agency" with reference to shorn wool means a person who sells a producer's wool for the producer's account, and with reference to lambs, it means a commission firm, auction market, pool manager, or any other person who sells lambs for the account of a producer.

"Marketing year" means the period beginning January 1 and ending the following December 31, both dates inclusive.

"Person" means an individual, partnership, association, business trust, corporation, or any organized unincorporated group of individuals, and includes a State and any subdivision thereof.

"Producer" of shorn wool means a person who either owns, individually or jointly, the sheep or lambs from which the wool is shorn or is a joint producer of the wool under a caretaking agreement as described in paragraph (b) of this section. "Producer" of lambs means a person who either owns the lambs, individually or jointly, or is a joint producer of the lambs under a caretaking agreement as described in paragraph (b) of this section.

"Sales document" means the account of sale, invoice, bill of sale, or other related document prepared by the purchaser evidencing the sale by the producer of shorn wool or unshorn lambs to the purchaser.

"Shorn wool" means grease wool sheared from live sheep or lambs, including black wool, tags, crutchings, and murrain or other wool removed from dead animals. Shorn wool does not include pelts or wool sheared from pelts, scoured, carbonized, or dyed wool or yarn, skeins or other terms which identify the wool as being other than in its natural greasy state.

"Slaughterer" means a commercial slaughterer, that is, a person who slaughters for sale as distinguished from a person who slaughters for home consumption.

"Specified marketing year" is the marketing year as to which the Department of Agriculture has announced that marketings of shorn wool and unshorn lambs by a producer during that year will entitle the producer to a payment under this program.

"Unshorn lambs" means lambs which have never been shorn.

"Wool" means, unless otherwise indicated, shorn wool.

"Wool price support payment rate" means the percentage required to bring the national average price received by all producers for the sale of shorn wool up to the support price.

[43 FR 9462, Mar. 8, 1978, as amended at 50 FR 34081, Aug. 23, 1985; 51 FR 5159, Feb. 12, 1986]

SHORN WOOL

§ 1472.1505 Price support payments.

(a) *General.* With respect to each specified marketing year, price support payments on shorn wool marketed in each marketing year will be made available to producers in accordance with the provisions of this subpart.

(b) *Announcement of wool price support payment rate.* The wool price support payment rate shall be determined and announced by the Executive Vice President, CCC, or the Executive Vice

President's designee at the end of each specified marketing year.

[50 FR 34082, Aug. 23, 1985, and 51 FR 5159, Feb. 12, 1986]

§ 1472.1506 Eligibility for payments.

(a) To be eligible for a payment with respect to shorn wool under this subpart, all requirements of this section must be fulfilled.

(b) Except as provided in § 1472.1544, the applicant must be the producer of shorn wool. In the case of a joint application for payment, each applicant must be a producer of shorn wool which is marketed in accordance with the provisions of § 1472.1507(c).

(c) The wool must have been shorn in the United States. If wool is shorn from imported sheep or lambs while they are held in quarantine in connection with their importation into the United States, such wool shall not be considered to have been shorn in the United States.

(d) The producer, or in the case of joint producers, at least one of the producers must have owned the wool at the time of shearing and must have owned in the United States the sheep or lambs from which the wool was shorn for not less than 30 days at any time prior to the filing of the application. Ownership of wool or animals as used in this paragraph does not include the ownership which in some States is held by a person having a security interest, such as a mortgage or other lien. If sheep or lambs are imported into the United States, the 30-day period of required ownership shall begin after their importation and, if they were quarantined in connection with such importation, the period shall begin after their release from quarantine.

(e) Beneficial interest in the wool must always have been in the producer from the time the wool was shorn up to the time of its sale. A producer has beneficial interest in wool (1) when the producer owns it and has not authorized any other person to sell or otherwise dispose of it, or (2) when the producer has, by transfer of legal title to such other person or otherwise, authorized another person to sell or otherwise dispose of the wool but continues to be entitled to the proceeds from any such sale or other disposition thereof. Such beneficial interest is not changed by a mortgage or other lien on the wool.

(f) The applicant shall either report purchases of unshorn lambs as required by § 1472.1511 (a)(1) or (b)(1), or make the statement provided for in § 1472.1511 (a)(2) or (b)(2).

(g) Payments will not be made on the marketing of wool shorn from imported sheep or lambs if the permit for the importation of the sheep or lambs or a communication connected with such permit, issued by the Animal and Plant Health Inspection Service of this Department states that the importation is for slaughter.

(h) Payments made in accordance with this subpart shall only be made with respect to bona fide marketings of shorn wool. The sale of shorn wool which has been altered in any manner through processing, other than scouring or carbonizing as provided in § 1472.1510(a)(3), or any other process or act that results in a wool product, as determined by the Deputy Administrator, is not eligible for payment under this subpart.

[43 FR 9462, Mar. 8, 1978, as amended at 50 FR 34082, Aug. 23, 1985; 51 FR 5159, Feb. 12, 1986]

§ 1472.1507 Bona fide marketing within a specified marketing year.

(a) Marketing shall be deemed to have taken place in a specified marketing year if, pursuant to a sale or contract to sell in the process of marketing, the last of the following three events, in whatever order they occur, was completed in that marketing year:

(1) Title passed to the buyer;

(2) The wool was delivered to the buyer (physically or through documents which transfer control to the buyer); and

(3) The last of the factors (price per pound, weight, etc.) needed to determine the total purchase price payable by the buyer is known to the applicant's purchase price payable by the buyer is known to the applicant's marketing agency, or is known to the applicant, if the applicant markets directly.

In addition, the full amount due the producer in connection with the marketing of wool must be paid to the producer in cash, merchandise, or services rendered before the producer may include it in the application for payment.

(b) A promissory note or other promise to pay, as well as a check not honored for any reason, shall not be considered as a payment to the producer unless the Deputy Administrator makes a determination that:

(1) The producer acted in good faith in marketing the wool;

(2) A bona fide marketing occurred;

(3) The wool was not returned to the producer;

(4) The producer was not aware and had no reason to suspect that the document tendered in payment for the wool was not worth its face value at the time of acceptance of the document, and

(5) The producer made a diligent effort to obtain payment for the wool from the purchaser. Notwithstanding the foregoing provisions of this paragraph, the price utilized for the purpose of computing the net sales proceeds under the provisions of § 1472.1508 shall not exceed the fair market value of the wool as determined by the Deputy Administrator.

(c) For the purpose of determining the amount of a price support payment, a bona fide marketing shall be deemed to occur when a producer relinquishes title to the shorn wool in exchange for a specific amount of money for each pound of wool tendered, or for services or merchandise of a specific monetary value as provided in paragraph (d) of this section. A sale of wool by a producer shall constitute a bona fide marketing if:

(1) The wool is sold to a person or business which normally purchases grease basis wool; and

(2) The producer selling the wool does not sell the wool to a family member or to any business in which the producer and or family member has more than a 20 percent interest.

(d) The exchange of wool for merchandise or services of a nature other than wool or wool product will be considered as a bona fide marketing if a definite price for the wool is established by the parties prior to the exchange. Such price, or whatever other price the Deputy Administrator determines is the fair market value for such wool, whichever is lower, shall be used for the purpose of computing the net sales proceeds under the provisions of § 1472.1508.

(e) The delivery of wool on consignment to a marketing agency to be sold for the producer's account does not constitute a marketing whether or not a minimum sales price is guaranteed or an advance against the prospective sales price is given by the consignee. Notwithstanding the foregoing, wool delivered to a marketing agency on consignment is deemed to have been marketed if the marketing agency:

(1) Has guaranteed a minimum sales price;

(2) Is unable to sell the wool for more than the minimum sales price, and

(3) Takes possession of the wool at the minimum sales price with the producer's consent.

The producer shall be deemed to have consigned the wool when the wool has been transferred to a marketing agency and the producer provides that such agency shall market the wool and that the producer shall be entitled to the proceeds of such marketing.

[43 FR 9462, Mar. 8, 1978, as amended at 50 FR 34082, Aug. 23, 1985; 51 FR 5159, Feb. 12, 1986; 52 FR 4277, Feb. 11, 1987; 52 FR 10732, Apr. 3, 1987; 52 FR 42078, Nov. 3, 1987]

§ 1472.1508 Computation of payment.

(a) The amount of the payment due a producer shall be computed by applying the rate of payment to the net sales proceeds for the wool marketed during the specified marketing year. The resultant amount shall be reduced, because of the purchase by the producer of unshorn lambs, by an amount resulting from multiplying the liveweight of such lambs reported in the application for payment by the announced rate of payment on unshorn lambs during said marketing year. If the amount of the reduction exceeds the payment computed on the shorn wool marketed, the liveweight of lambs which corresponds to the excess amount shall be carried forward and used to reduce payments on unshorn lambs marketed or slaughtered or shorn wool marketed in the current or future years.

(b) Except as provided in § 1472.1510(a)(6) with respect to a guaranteed minimum sales price, the net sales proceeds shall be determined by deducting from the gross sales proceeds of the wool all marketing expenses, such as any charges paid by or for the account of the producer for transportation, handling (including commissions), grading, scouring, or carbonizing. The figure so arrived at will express the net proceeds received by the producer at the farm, ranch, or local shipping point. Charges for wool bags or storage, as well as any other charges not directly related to the marketing of the wool such as interest on advances, shall not be considered marketing charges.

(c) All applications filed by a producer in the same county office for payments due on wool marketed during the specified marketing year shall be considered together for the purpose of determining the total net amount of payment due. All such applications filed in different county offices may be considered together in determining such total payment.

§ 1472.1509 Preparation of application.

(a) *Preparation.* The application for payment on the sale of shorn wool shall be prepared on Form CCC-1155, "Application for Payment (National Wool Act)." Marketing agencies may assist producers in filling out applications by inserting the information on sales of shorn wool and sending the sales documents to the appropriate ASCS county office, but the producer must sign the application and is responsible for the requirements as to the time and manner of filing the application. If the producer paid marketing charges not shown on the sales document, such charges shall be considered with the marketing charges shown on the sales document covering the wool sold.

(b) *Supporting documents.* The application shall be supported by the original sales document evidencing the sale of wool. The processing of shorn wool by a process or act which, as determined by the Deputy Administrator, produces a wool product, shall make the wool ineligible for a price support payment. Payment shall not be made on marketings of wool products, including items identified as yarn, wool yarn, skeins, or novelty items. Trimming, skirting and cleaning by scouring or carbonizing, provided the grease basis weight is established, does not make the wool ineligible for a price support payment.

(c) *Original sales document retained.* If the applicant does not wish the original sales document to remain within the ASCS county office, the applicant may submit a photostat, carbon, or other copy of the original document. However, the applicant must show the original document to the ASCS county office where the statements on the copy will be confirmed by comparison with the original. The original sales document will be appropriately stamped or marked to indicate that it had been used in support of an application for payment under this program and will be returned to the applicant, who shall retain it in accordance with § 1472.1551.

(d) *Practice of issuing carbon or photostat copies.* If it is the practice of the person or firm preparing the sales document to furnish a carbon or photostat copy to the seller in place of the original, the producer may submit that copy in support of the application, provided the copy bears a signature, in accordance with § 1472.1510 (a)(10), of the person or of the representative of the firm preparing the original sales document. Such copy shall be treated as an original for the purposes mentioned in this section.

(e) *Lost or destroyed sales documents.* If the original sales document has been lost or destroyed, the applicant may submit a copy, certified by the buyer or the applicant's marketing agency, and such certified copy shall be treated as an original for the purposes mentioned in this section.

[43 FR 9462, Mar. 8, 1978, as amended at 50 FR 34083, Aug. 23, 1985; 51 FR 5159, Feb. 12, 1986]

§ 1472.1510 Contents of sales documents.

The sales documents attached to each application for an incentive payment must contain a final accounting and meet the requirements of paragraph (a) or (b) of this section, for the wool covered by the sales document. Contracts to sell as well as tentative or pro forma settlements will not be acceptable as sales documents meeting such requirements. Except as provided in § 1472.1544, sales documents must cover wool sold by the producer.

(a) *Sales other than at farm, ranch, or local shipping point.* Each sales document, except a document which involves a direct sale of wool at the producer's farm, ranch, or local shipping point, must be prepared by either: The purchaser, in which case the original signature of the purchaser or the signature of an authorized representative of the purchaser must be entered on the sales document, or the applicant's marketing agency. Each sales document must include at least the following:

(1) Name and address of seller.

(2) Date of sale. In case the producer's shipment to a marketing agency is sold in parts within a marketing year, the date when final settlement is made within that marketing year for the wool that was sold within the marketing year may be shown on the sales document as the date of sale instead of the various dates on which the sales actually took place.

(3) The net weight of wool sold on a grease basis. If the wool was sold as scoured or carbonized wool, the original grease weight must be shown as well as the scoured or carbonized weight.

(4) Except as otherwise provided in paragraph (a)(5) of this section, the gross sales proceeds or sufficient information from which the gross sales proceeds can be determined.

(5) Marketing deduction, if any (see § 1472.1508(b)), except as otherwise provided in this subparagraph. The marketing deductions may be itemized or they may be shown on the sales document as a composite figure for all marketing charges with an explanation of what services are included in that figure. If it is the practice of a marketing agency to show, on the sales document, only the net proceeds after marketing deductions, the gross sales proceeds and the amount of the marketing deductions need not be shown, provided the sales document contains a statement reading substantially as follows:

> "The net sales proceeds after marketing deductions shown herein were computed by deducting from the gross sales proceeds charges for the following marketing services: ———. Details of these charges will be furnished on request."

All the services for which deductions are made shall be enumerated in the blank space indicated. If a sales document shows charges without specifying their nature, they will be considered marketing charges and thus diminish the net proceeds on which the incentive payment is computed. Association dues are to be considered marketing deductions if they include compensation for marketing services.

(6) Net proceeds after marketing deductions. If a sales document contains a figure for net proceeds after marketing deductions, computed for a location other than the producer's farm, ranch, or local shipping point, the person preparing the sales document shall show thereon the name of the location for which the net proceeds have been computed. If a marketing agency has guaranteed a minimum sales price for the wool, is unable to sell the wool for a higher price, and therefore settles with the producer on the basis of such guaranteed minimum price, the sales document should be on the basis of that guaranteed minimum price regardless of a lower price at which the agency may sell the wool. In such a case, the marketing agency may indicate on the sales document that the price is the guaranteed minimum sales price.

(7) Additional deductions, such as charges for bags, storage, interest, association dues which do not include compensation for marketing services, or other charges not directly related to the marketing of the wool.

(8) The amount paid to the seller of the wool on a grease basis.

(9) Name and address of the purchaser or marketing agency, whichever issues the sales document.

(10) *Signature.* The sales document must bear a handwritten signature by or on behalf of the person or firm issuing the sales document. Acceptable signatures will consist of at least one initial or name by which the person is generally known, followed by the last name in full. A carbon impression or facsimile of a handwritten signature is not acceptable.

(11) A sales document issued by a marketing agency and covering sales made on various dates within a specified marketing year shall contain a statement that the wool was marketed during the marketing year.

(12) A sales document covering wool exchanged for merchandise or services (§ 1472.1507(d)), shall contain a clear statement that the transaction is an exchange rather than a cash sale.

(b) *Sales at farm, ranch, or local shipping point.* Each sales document involving a sale of wool at the producer's farm, ranch or local shipping point which is attached to an application for a price support payment shall be prepared by the purchaser with the original signature of the purchaser and must contain at least the following:

(1) Name and address of seller.

(2) Date of sale.

(3) The net weight of wool sold on a grease basis. If the wool was sold as scoured or carbonized wool, the original grease weight must be shown as well as the scoured or carbonized weight.

(4) Net amount received by the seller for the wool at the farm, ranch, or local shipping point.

(5) Any applicable nonmarketing deductions, such as charges for bags, storage, interest, association dues which do not include compensation for marketing services, or other charges not directly related to the marketing of the wool.

(6) Name and address of the purchaser.

(7) Signature. The sales document must bear a handwritten signature by or on behalf of the person or firm issuing the sales document. Acceptable signatures will consist of at least one initial or name by which the person is generally known, followed by the last name in full. A carbon impression or facsimile of a handwritten signature is not acceptable.

(8) A sales document covering wool exchanged for merchandise or services (§ 1472.1507(d)), shall contain a clear statement that the transaction is an exchange rather than a cash sale.

[43 FR 9462, Mar. 8, 1978, as amended at 50 FR 34083, Aug. 23, 1985; 51 FR 5159, Feb. 12, 1986]

§ 1472.1511 Report of purchases of unshorn lambs.

(a) *Report on actual basis.* (1) If the application includes wool removed in the first shearing of lambs purchased unshorn, and the applicant is able to identify the lambs from which such wool was shorn, the applicant shall report the number and liveweight of such lambs at time of purchase, including those from which wool was removed after death.

(2) If the applicant knows that the application does not include any wool which was removed in the first shearing of lambs purchased unshorn, the applicant shall state that there are no purchases of unshorn lamb related to the sale of such wool.

(b) *Report on "first in, first out" basis.* (1) If an applicant does not know whether the application includes wool removed in the first shearing from lambs purchased unshorn, or an applicant knows that such wool is included but is unable to identify the lambs from which such wool was shorn, the applicant shall report on a "first, in, first out" basis, that is, in chronological order, the number and liveweight at the time of purchase of a quantity of lambs purchased unshorn equal to the number of sheep and lambs from which wool was shorn and included in the application. This reporting of purchased lambs shall be continued in applications for the current and subsequent marketing years for payments on shorn wool and for payments on unshorn lambs until the applicant has accounted for all lambs purchased unshorn on or after April 1, 1956, not reported in previous applications. However, the applicant need not report those lambs with respect to which the applicant can show no application has been made for a payment for the 1956 or a subsequent marketing year on their sale or on the sale of wool shorn from them.

(2) If the application for payment on the sale of shorn wool is made after an applicant has accounted for the total purchases of unshorn lambs, the applicant shall state that there are no purchases of unshorn lambs related to such sale.

(c) *Imported lambs.* If purchased lambs which the applicant is required to report were imported, the liveweight required to be reported shall be the liveweight of the lamb at the time of import, or if they were quarantined in connection with the importation, at the time of release from quarantine. For the purpose of reporting imported lambs, whether they were purchased or raised by the producer they shall be treated as if they had been purchased. Any report in an application of purchased lambs and their liveweights as required by this paragraph shall be deemed to include lambs both purchased and raised by the producer.

(d) *Additional information.* The applicant shall furnish any additional details requested by ASCS State and county offices concerning any report made pursuant to this section.

UNSHORN LAMBS (PULLED WOOL)

§ 1472.1521 Price support payments.

(a) *Level of payments.* For each marketing year, price support will be furnished on pulled wool at such level, in relationship to the support price for shorn wool, as the Secretary determines will maintain normal marketing practices for pulled wool, by means of payments to the producer in accordance with this subpart on live unshorn lambs that are sold or moved to slaughter in a specified marketing year. Payments will not be made on the sale of the pelts of sheep or lambs or wool removed from such pelts.

(b) *Rate of payment.* The rate of payment will be 80 percent of the difference between the national average price per pound received by producers for shorn wool during a specified marketing year and the support price per pound of shorn wool multiplied by the average weight of wool per hundredweight of animals (5 pounds). The exact rate of payment will be determined and announced, after the end of that marketing year, as a specified amount per hundredweight of live animals.

[43 FR 9462, Mar. 8, 1978, as amended at 47 FR 16162, Apr. 15, 1982]

§ 1472.1522 Eligibility for payments.

Before payments under this program can be approved pursuant to an application covering any lot or lots of lambs, the following requirements must be satisfied:

(a) Except as provided in § 1472.1544, the applicant must be the producer, and in the case of a joint application each applicant must be a producer, of the lambs.

(b) The producer, or in the case of joint producers, at least one of the producers must have owned the lambs for 30 days or more in the United States and title must have passed to the buyer within the specified marketing year. If a slaughterer is to qualify for a payment, the slaughterer must have owned the lambs for 30 days or more in the United States prior to their moving to slaughter and they must have moved to slaughter within the specified marketing year. Ownership of lambs, as used in this paragraph, does not include the ownership which in some States is held by a person having a security interest, such as a mortgage or other lien. If lambs are imported into the United States, the 30-day period of required ownership shall begin after their importation, and, if they were quarantined in connection with such importation, the period shall begin after their release from quarantine.

(c) The lambs must never have been shorn at the time of sale, or, in the case of an application by a slaughterer, at the time of moving to slaughter.

(d) The applicant shall either report purchases of unshorn lambs as required by § 1472.1526 (a)(1) or (b)(1), or make the statement provided for in § 1472.1526 (a)(2) or (b)(2).

(e) Payments will not be made on the marketing of imported lambs if the permit for the importation of the lambs or a communication connected with such permit, issued by the Animal and Plant Health Inspection Service of this Department, states that the importation is for slaughter.

(f) Payments under this subpart shall only be made on bona fide marketings in a specified marketing year.

§ 1472.1523 Computation of payment.

(a) The amount of the payment due to an applicant shall be computed by applying the rate of payment to the liveweight of the lambs sold or moved to slaughter during the specified marketing year, reduced, on account of the purchase or importation by the applicant of unshorn lambs, by the liveweight of such lambs reported in the application for payments. If the amount of the reduction exceeds the liveweight of the unshorn lambs sold or moved to slaughter during said marketing year, such excess liveweight shall be carried forward and used to reduce payments on unshorn lambs marketed or slaughtered or shorn wool marketed in the current or future years.

(b) All applications filed by a producer in the same county office for payments due on unshorn lambs marketed or moved to slaughter during the specified marketing year shall be considered together for the purpose of determining the total net amount of payment due. All such applications filed in different county offices may be considered together in determining such total payment.

§ 1472.1524 Preparation of application.

(a) *Preparation.* The application for payment on the sale or slaughter of unshorn lambs shall be made on Form CCC-1155, "Application for Payment (National Wool Act)."

(b) *Supporting documents.* The application for payment on the sale of unshorn lambs shall be supported by the original sales documents covering the sale. The application for payment on the slaughter of unshorn lambs shall be supported by the scale ticket covering the movement to slaughter.

(c) *Original sales document retained.* If the applicant does not wish the original sales document to remain with ASCS county office, the applicant may submit a photostat, carbon, or other
copy of the original document. Ho
er, an applicant must show the
nal document to the ASCS co
office where the statements on
copy will be confirmed by compa
with the original. The original
document will be appropri
stamped or marked to indicate th
had been used in support of an a
cation for payment under this
gram and will be returned to the a
cant. The applicant is require
retain it in accordance
§ 1427.1551.

(d) *Practice of issuing carbon*
photostat copies. If it is the practic
the person or firm preparing the s
document to furnish a carbon or
tostat copy to the seller in place of
original, the applicant may sub
that copy in support of the appl
tion, provided the copy bears
signature in accordance
§ 1472.1525(a)(6), of the person or
representative of the firm prepar
the original sales document. S
copy shall be treated as an original
the purpose mentioned in this secti

(e) *Lost or destroyed sales docume*
If the original sales document or sc
ticket has been lost or destroyed,
applicant may submit a copy, certif
by the person who issued the origin
and such certified copy shall be tre
ed as an original for the purposes me
tioned in this section.

§ 1472.1525 Contents of sales docume and scale tickets.

(a) *Sales documents.* Each sales do
ument supporting an application mu
cover lambs sold by the produc
except as provided in § 1472.1444, mu
be issued by the purchaser or the pr
ducer's marketing agency, and mu
show the following:

(1) Name and address of seller.

(2) Date of sale.

(3) Number of unshorn lambs sol
If the sales document does not clear
identify the animals as lambs that ha
never been shorn at the time of sal
the person issuing the sales documen
shall add a statement to that effect. I
the sales document refers to the animals as "unshorn lambs," this will indicate that the lambs were neve
shorn. If the document issued in con-

nection with the sale of unshorn lambs also covers the sale of other animals, the person preparing the sales document shall clearly indicate therein the number and the liveweight of unshorn lambs included in the sale.

(4) Liveweight of unshorn lambs sold. If the weight is not determined by scales, this weight may be an estimated weight agreed to by the purchaser and the producer.

(5) Name and address of the purchaser or marketing agency, whichever issues the sales document.

(6) Signature. The sales document must bear a handwritten signature by or on behalf of the person or firm issuing the sales document. Acceptable signatures will consist of at least one initial or name by which the person is generally known, followed by the last name in full. A carbon impression or facsimile of a handwritten signature is not acceptable.

(b) *Scale tickets.* The scale ticket supporting an application must cover unshorn lambs moved to slaughter by the applicant and must show the information normally appearing on scale tickets issued by stockyards (that is, date, number of head, classification(s), weight by classification, scale ticket number, if any, place of weighing, and name of weigher).

§ 1472.1526 Report on purchases of unshorn lambs.

(a) *Report on actual basis.* (1) If the application is based on the sale or slaughter of lambs purchased unshorn and the applicant is able to identify such lambs, the applicant shall report the number of lambs purchased and their liveweight at the time of purchase.

(2) If the applicant knows that the application is not based on the sale or slaughter of such lambs purchased unshorn, the applicant shall state that there are no purchases of unshorn lambs related to the sale or slaughter of such lambs.

(b) *Report on "first in, first out" basis.* (1) If an applicant does not know whether the application is based on the sale or slaughter of lambs purchased unshorn, or knows that such lambs are included but is unable to identify such lambs, the applicant shall report on a "first in, first out" basis, that is, in chronological order, the number and liveweight at the time of purchase of a quantity of lambs purchased unshorn equal to the number of lambs on which the application is based. This reporting of purchased lambs shall be continued in applications for the current and subsequent marketing years for payments on unshorn lambs and shorn wool until the applicant has accounted for all lambs purchased unshorn on or after April 1, 1956, not reported in previous applications. However, the applicant need not report any lambs when it can be shown that no application has been made for a payment for the 1956 or a subsequent marketing year on their sale or on the sale of wool shorn from them.

(2) If the application for payment on the sale or slaughter of unshorn lambs is made after an applicant has accounted for the total purchases of unshorn lambs, the applicant shall state that there are no purchases of unshorn lambs related to such sale or slaughter.

(c) *Imported lambs.* If purchased lambs which the applicant is required to report were imported, the liveweight required to be reported shall be the liveweight of the lambs at the time of import, or, if they were quarantined in connection with the importation, at the time of release from quarantine. For the purpose of reporting imported lambs, whether they were purchased or raised by the producer, they shall be treated as if they had been purchased. Any report in an application of purchased lambs and their liveweight as required by this paragraph shall be deemed to include lambs both purchased and raised by the producer.

(d) *Additional information.* The applicant shall furnish any additional details requested by ASCS State and county offices concerning any report made pursuant to this section.

General Provisions

§ 1472.1541 Filing application for payment.

(a) *Place of filing.* Applications for payment shall be filed by the applicant with the ASCS county office serving the county where the headquarters of the producer's farm, ranch, or feed lot, as the case may be, is located. If the producer has more than one farm, ranch, or feed lot, with headquarters in more than one county, separate applications for payment shall be filed with the ASCS county office serving each such headquarters covering only the wool and lambs produced at each such farm, ranch, or feed lot, except that:

(1) If the producer sells the entire clip of wool in a single sale or if the entire clip is sold for the producer's account by one marketing agency, the producer may file the application(s) for payment on shorn wool in any one of those ASCS county offices, or (2) if the producer includes in one sale unshorn lambs that were ranged, pastured, or fed in more than one county, the producer may file the application(s) for payment on such lambs in any one of those ASCS county offices. In the event all business transactions are conducted from the producer's residence or office, and the farm or ranch has no other headquarters, the office or residence may be considered the farm or ranch headquarters.

(b) *Time of filing.* An application for payment shall be filed as soon as possible after completion of the sales of shorn wool or unshorn lambs for the specified marketing year, or in the case of slaughter, as soon as possible after the last of the lambs moved to slaughter in the specified marketing year, but in no event shall an application be filed later than 3 years after the end of the specified marketing year.

(c) *Withdrawal or amendment of application for payment on shorn wool.* (1) An applicant may request permission from the ASC county committee to withdraw an application for payment on shorn wool which constitutes the full first shearing of purchased unshorn lambs when, as a result of such application containing the necessary report of purchases of unshorn lambs on an "actual basis," there is excess liveweight carried forward which would be used to reduce payment in the current or future marketing years. An applicant may also request permission to amend the application by omitting sales of those lots of wool constituting the full first shearing of purchased unshorn lambs reported on an "actual basis." These requests must be accompanied by such supporting evidence as may be required by the ASC county committee. If the application was signed jointly by two or more producers, the request for withdrawal or amendment must be signed by each such producer. To be considered a full shearing, the wool must constitute the complete fleece, and not merely tags, clippings, trimmings around the eyes, or other offwools.

(2) If the ASC county committee is satisfied that the conditions described in paragraph (c)(1) of this section exist, the committee may grant the request. If the applicant has filed additional shorn wool applications in other ASCS county offices, the request may be granted only if it is determined that such additional applications do not include any wool removed in the full first shearing of the lambs which will not be reported as a result of the withdrawal or amendment.

§ 1472.1542 Signature of applicant.

No payment will be made unless an application for payment on shorn wool or unshorn lambs is signed. Each person who signs an application for payment in a representative or fiduciary capacity as agent, attorney-in-fact, officer, executor, etc., must be properly authorized to sign in such capacity.

§ 1472.1543 Joint applicants.

When the applicant for a shorn wool payment is a joint producer of the wool, all of the joint producers (except those who sign a release as provided below in this section) must sign any application based on the sale of such wool regardless of whether the wool was divided among such producers prior to sale or was sold without division. When the applicant for a payment of unshorn lambs is a joint producer of the lambs, all of the joint producers (except those who sign a release as provided below in this section) must sign any application based on the sale of such lambs regardless of whether the lambs were divided among such producers prior to sale or were sold without division. CCC will not be responsible for a division among the applicants of a payment made to all of them jointly. When the application shows such joint production, and one or more of the joint producers refuse to join in the application, if each such joint producer signs a form prescribed by CCC releasing CCC from any obligation to make a payment to such a joint producer, CCC shall make payment of the amount due the remaining joint producers who sign the application. Such release(s) shall be attached to the application. When any joint producer is entitled to join in an application but fails to do so, and the application does not show this interest as a joint producer, the producer shall have no claim against CCC for any portion of the payment made pursuant to the application.

§ 1472.1544 Disability.

(a) If a producer who is otherwise eligible to receive a payment under this subpart dies, disappears, or is declared incompetent, before marketing the shorn wool or unshorn lambs or before filing an application, the successors or representatives authorized to receive payment in the order of precedence set forth in Part 707 of this title may complete the eligibility requirements and make application for such payment on Form CCC-1155. The applicant shall also file Form ASCS-325, "Application for Payment of Amounts Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent," in accordance with Part 707 of this title.

(b) If a producer who earned a payment under this subpart and filed an application therefor dies, disappears, or is declared incompetent, either before CCC has issued a draft in payment or after CCC has issued a draft in payment but before the draft is negotiated, the successors or representatives authorized to receive such payment in the order of precedence set forth in Part 707 of this title may apply therefor on Form ASCS-325, in accordance with Part 707 of this title.

(c) If an Indian who is incompetent earned a payment under this subpart, an application therefor may be filed on behalf of the Indian by the Superintendent of the Indian Field Service of the reservation on which the Indian resides or by the authorized representative of such Superintendent. Such application for payment will be filed in the ASCS county office where the headquarters of the Indian's farm or ranch is located.

(d) In all other cases of disability, including bankruptcy dissolution, payments will be made to a representative only in accordance with specified directions issued by CCC.

§ 1472.1545 Payment.

(a) Payment will be made under this subpart after the ASCS county office has reviewed the application and attached supporting documents and has approved payment in whole or in part, and after the appropriate rate of payment for the specified marketing year has been announced by the Department of Agriculture.

(b) Payments under this subpart shall be made only on the basis of the net sales proceeds received for shorn wool and on the liveweight of lambs sold or moved to slaughter. No payment shall be made on that part of any sale which has been cancelled or on the basis of prices or weights which have been fraudulently increased for the purpose of obtaining higher payments. No payment shall be made on sales to a wool growers association (as distinguished from a cooperative marketing association) by its producer-members on the basis of net sales proceeds in excess of the fair market value of the wool (grease basis) as determined by CCC.

(c) Notwithstanding any other provision of this part, price support payments shall not be made with respect to that portion of the sales proceeds received by a producer for eligible wool which is based on sales prices in excess of the maximum sales price per pound for wool as determined by the Deputy Administrator. The Deputy Administrator shall determine the maximum sales price per pound for wool marketed in each marketing year on the basis of the national average market price for wool computed for each marketing year. The maximum sales price shall be an amount which the Deputy Administrator determines will encourage the continued domestic production of wool at prices fair to both producers and consumers in a manner which would assure a viable domestic wool industry. The maximum sales price shall be publicly announced by the Department of Agriculture at the end of each marketing year for wool.

(d) If it is determined by the ASCS State or county office that an applicant knowingly made a false statement in the application, including failure to report accurately purchases of unshorn lambs, no payment shall be made with respect to such application.

(e) If CCC subsequently determines that available evidence does not sustain the applicant's right to all or any part of a payment made, the amount of the payment not so sustained shall immediately become due and repayable to CCC, and CCC may, without limitation upon any of the Government's rights in the matter, deduct such amount from any other payment due the applicant under this subpart. If the right to such amount becomes involved in a lawsuit between the Government and the applicant or the assignee, the applicant or the assignee shall have the burden of proving that the applicant was entitled to such amount.

(f) If the ASCS county office rejects in whole or in part an application for payment on shorn wool or unshorn lambs, or, after a payment has been made, determines that the available evidence does not sustain the applicant's right to the payment or any part thereof, the ASCS county office shall mail a notice to the applicant, or, in the case of a joint application, to each applicant, that the application has been rejected, specifying the reason therefor, or that the available evidence does not sustain the applicant's right to the payment or any part thereof, as the case may be.

[43 FR 9462, Mar. 8, 1978, as amended at 52 FR 4277, Feb. 11, 1987; 52 FR 42078, Nov. 3, 1987]

§ 1472.1546 Deductions for promotion.

(a) If the Department of Agricultur has approved deductions for an advertising and sales promotion program i accordance with sections 708 of th National Wool Act of 1954, as amended, the rate of such deductions for the specified marketing year will be announced and the appropriate deduction will be made from each payment due under this subpart for such specified marketing year.

[43 FR 9462, Mar. 8, 1978, as amended at 47 FR 16162, Apr. 15, 1982]

§ 1472.1547 Setoff.

If the county office records show that the producer is indebted to CCC, to any other agency within the U.S. Department of Agriculture, or to any other agency of the United States, such indebtedness will be set off against the payment due to the producer in accordance with Part 1408 of this chapter.

§ 1472.1548 Liens on sheep or wool.

If a producer grants a lien on sheep, lambs, or wool, such lien shall not be deemed to extend to payments made to the producer pursuant to this subpart.

§ 1472.1549 Requests for reconsideration and appeals.

Any applicant, who is notified that the application has been rejected in whole or in part or that any other action has been taken by the ASCS county office which unfavorably affects a payment, may obtain reconsideration and review of the determination in accordance with Part 780 of this title. In the request for reconsideration, the applicant shall identify the application by number and date. When a joint application is involved, the request for reconsideration and review may be filed by all applicants jointly or by any of the applicants, in which case it shall be considered a request in behalf of all the joint applicants.

§ 1472.1550 Assignments.

(a) *Form.* An assignment of a payment due or to become due under this subpart on shorn wool or on unshorn lambs may be given to a financing agency or a wool marketing agency as security for cash advanced or to be advanced on sheep, lambs, or wool. The assignee shall not reassign such payment. One assignment may cover payments due or to become due on the sale of shorn wool or unshorn lambs or both. An assignment may only include payments due or to become due for a specified marketing year and must include all payments due and to become due for that specified marketing year on the commodity or commodities for which payment is being assigned. The assignment shall be executed by the producer or in the case of joint producers by all such producers, on Form CCC-1157, "Assignment of Payment Under the National Wool Act of 1954." The applicant's signature shall be witnessed by a member of the county or community ASC committee for the county where the farm is located, or by an employee of the county committee.

(b) *Payment.* CCC will make payment pursuant to an accepted assignment unless the ASCS county office is furnished evidence that the assignment has been released by the assignee.

§ 1472.1551 Records and inspection thereof.

(a) The applicant for a payment under this subpart, as well as the marketing agency and any other person who furnishes evidence to such applicant for use in connection with the application, shall maintain books, records, and accounts pertaining to the marketing of the commodity on which the application is based, for 3 years following the end of the specified marketing year during which the marketing took place. The applicant shall maintain books, records, and accounts pertaining to the production of wool, sheep, and lambs and the shearing thereof, with respect to which the applicant applies for payment, for 3 years following the end of the specified marketing year during which the marketing took place. The applicant shall also maintain books, records, and accounts showing the purchases of lambs on or after April 1, 1956, for 3 years following the end of the specified marketing year during which any such lambs have been marketed, as the case may be. If the applicant is required to report purchases of unshorn lambs on a "first in, first out" basis, the applicant shall maintain such books, records, and accounts of such lambs for 3 years following the end of the specified marketing year for which such lambs are to be reported.

(b) If an application is based on the sale of wool shorn from imported sheep or lambs, or on the sale of imported lambs, or it lambs required to be reported as purchased unshorn were imported, the books, records, and accounts required by paragraph (a) of this section to be maintained by the applicant shall show the details of such importation, including the date of arrival of the lambs in the United States and the liveweight on such date, and if the lambs were quarantined, the date when they were released from quarantine and their liveweight on such date.

(c) With respect to any application for payment filed after the end of the specified marketing year, instead of maintaining the books, records, and accounts for the time specified in paragraph (a) of this section, such books, records, and accounts shall be maintained for 3 years following the date on which the application is filed.

(d) At all times during regular business hours, authorized representatives of CCC or the Department of Agriculture shall have access to the premises of the applicant, of the marketing agency, and of the person who furnished evidence to an applicant for use in connection with the application, in order to inspect, examine, and make copies of the books, records, and accounts, and other written data as specified in paragraphs (a), (b), and (c) of this section.

§ 1472.1552 Violations of program.

(a) Whoever issues a false sales document or otherwise acts in violation of the provisions of this program so as to enable an applicant to obtain a payment to which such person is not entitled, shall become liable to CCC for any payment which CCC may have made in reliance on such sales document or as a result of such other action.

(b) The issuance of a false sales document or the making of a false statement in an application for payment or other document, for the purpose of enabling the applicant to obtain a payment to which such pereson is not entitled, will subject the person issuing such document or making such statement to liability under applicable Federal civil and criminal statutes.

§ 1472.1553 Forms.

(a) Form CCC-1155, "Application for Payment (National Wool Act)," Form CCC-1157, "Assignment of Payment Under the National Wool Act of 1954," Form ASCS-325, "Application for Payment of Amounts Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent," and other forms issued by the U.S. Department of Agriculture for use in connection with this program may be obtained from ASCS county offices.

§ 1472.1554 Authorization by Executive Vice President, CCC, or other official.

If the applicant is unable to furnish the documentary evidence of sale required in this subpart, the Executive Vice President, CCC, or the Deputy Administrator, State and County Operations, ASCS, may authorize the submission of any other evidence which establishes to the satisfaction of the authorizing official the information required by §§ 1472.1510 and 1472.1525.

§ 1472.1555 Expiration of time limitations.

Whenever the final date for filing an application falls on a Saturday, Sunday, national holiday, or State holiday, or on any other day on which the appropriate ASCS State or county office is not open for the transaction of business during normal working hours, the time for filing the application shall be extended to the close of business on the next working day. If filing is by mail, it shall be considered timely if it is postmarked by midnight of such next working day.

§ 1472.1556 OMB Control Numbers assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in these regulations (7 CFR Part 1472) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Number 0560-0023.

[50 FR 34083, Aug. 23, 1985, and 51 FR 5159, Feb. 12, 1986]

PART 1474—FARM STORAGE FACILITIES

Subpart—Farm Facility Loan Program Regulations

Sec.

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1474.18 Forms.

AUTHORITY: Secs. 4 and 5, 62 Stat. 1070, as amended, 15 U.S.C. 714b, 714c.

Subpart—Farm Facility Loan Program Regulations

§ 1474.1 General statement.

This subpart sets forth the policies, procedures, and requirements governing loans made by the Commodity Credit Corporation (hereinafter referred to as "CCC") for the purchase of farm facilities or remodeling of existing facilities under the Farm Facility Loan Program. Interested persons should refer to related procedures and forms which have been adopted by each State ASC committee to assure compliance with State law. The program may be suspended at any time except in areas where the Secretary has determined that there is a deficiency of storage for grain.

[47 FR 33669, Aug. 4, 1982]

§ 1474.2 Administration.

(a) The Cotton, Grain and Rice Price Support Division, Agricultural Stabilization and Conservation Service (hereinafter referred to as "ASCS"), will administer the provisions of this subpart under the general supervision and direction of the Deputy Administrator, State and County Operations, ASCS. On matters involving individual loans which would otherwise require approval or other action by the Executive Vice President, the Deputy Administrator, State and County Operations, is authorized to give such approval or take such other action as may be necessary. The program will be carried out through Agricultural Stabilization and Conservation State and county committees (hereinafter referred to respectively as "State committee" and "county committee").

(b) Forms will be available in ASCS county offices.

(c) State and county committees and employees thereof do not have authority to waive any of the provisions of this subpart or any amendment thereto. Forms and procedures may be modified to the extent necessary to conform to any requirements of State law.

(d) No delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, or his designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(e) Except for Forms CCC-185, all documents required to be signed on behalf of CCC in connection with loans or other related actions under the Farm Facility Loan Program shall be signed by the chairperson or member of the county committee, or by the county executive director if the county committee has so authorized. *However*, all such approvals required for loans or other related actions must have been given in accordance with the provisions of this subpart. With respect to loans which are approved by the county committee, forms CCC-185 shall be signed by the chairperson or a member of the county committee. With respect to loans approved by the State committee, forms CCC-185 shall be signed by the chairperson or a member of the State committee.

[39 FR 38632, Nov. 1, 1974, as amended at 47 FR 33669, Aug. 4, 1982]

§ 1474.3 Availability of loans.

(a) *Time.* Loan applications will be accepted by county offices only during the period and for farm storage facilities in such areas as announced by the Secretary.

(b) *Applications for loan.* An application for a loan shall be submitted to the county office of the county in which are maintained the records of the farm or farms to which the application relates. Upon request, the applicant shall furnish such information and documents as the State or county committee deem necessary to support the application. This may include but is not limited to financial statements, receipted bills, invoices, purchase orders, specifications, drawings or plats. The county office will be responsible for taking appropriate action on the application. Loan disbursements will be made by sight drafts drawn on CCC by the county offices.

[39 FR 38632, Nov. 1, 1974, as amended at 47 FR 33669, Aug. 4, 1982]

§ 1474.4 Eligible borrowers.

(a) *Basic requirements.* The term "eligible borrower" means any person who as landowner, landlord, tenant, or sharecropper (1) Produces one or more of the following commodities, hereinafter called "facility loan commodities": corn, oats, barley, sorghum, wheat, and rice, (2) needs farm facilities for the storage of one or more such commodities, and (3) participates in any acreage reduction program in effect for facility loan commodities used to determine the borrower's needs for the farm facility. If two or more eligible borrowers join together in the purchase of eligible farm storage facilities, each such borrower shall sign all documents, when required, and shall be liable jointly and severally for repayment of the loan to CCC. The term "person" means any individual or individuals competent to enter into a binding contract, including a partnership, firm, joint-stock company, corporation, association, trust, estate, or other legal entity, or a State, political subdivision of a State, or any agency thereof.

(b) *Need for facility.* At the time any loan application is being considered, the county committee shall determine if the proposed farm facility is needed for the storage of facility loan commodities produced on the farm(s) to which the loan application relates. In making this determination, the maximum storage capacity for which a loan may be made shall be the amount by which the total capacity of existing storage on the farm(s) which is suitable for storage of facility loan commodities is less than the storage capacity necessary to store one year's production (computed on the basis of estimates yields) of the facility loan commodities produced on the farm(s) to which the loan application relates. If the capacity of the storage to be purchased or erected by the applicant exceeds the need as determined above, the application may be approved but the amount of such loan shall not exceed the maximum amount authorized in § 1474.8(b).

(c) The applicant meets the eligibility requirements prescribed in 7 CFR Part 12.

[47 FR 33669, Aug. 4, 1982, as amended at 51 FR 36930, Oct. 16, 1986]

§ 1474.5 Eligible storage or drying equipment.

(a) *Basic requirements.* Loans shall be made only for the purchase and installation of eligible storage facilities or for remodeling existing facilities, as provided in this section. Eligible storage facilities shall include the following:

(1) New or newly constructed conventional-type cribs, bins or flat structures designed and engineered for grain storage;

(2) Flat storage structures designed and engineered for multipurpose use which are adapted or modified for use as grain storage: *Provided,* that if only a portion of the structure is for use as grain storage, the area or space used for grain storage must be isolated or closed off from other use areas and only the pro rata costs of the portion of space used for grain storage shall be included in determining the amount of the loan;

(3) Oxygen-limiting and other upright silo-type structures designed for wet storage; and

(4) Used structures (including the real estate where located, if any) if purchased from CCC or sold by CCC under provisions of a security agreement.

(b) *Additional requirements or provisions.* (1) If the farm storage facility is purchased from a source other than CCC, the supplier must be approved under Supplier's Agreement, Form CCC-308, before the loan is approved. CCC may also require the supplier to certify to the costs of the items and amounts paid and unpaid before the loan is disbursed.

(2) A storage facility shall not have been delivered to the farm more than 30 days prior to the date of the application for the loan.

(3) Loans may include only the cost of new materials and off-farm labor to be used in constructing new storage or in the remodeling of existing facilities.

(4) Loans may be approved for the purchase of used storage facilities only when such facility is purchased from CCC.

(5) Storage structures shall not be of a type (such as bags or snow fences) which require the weight or bulk of the commodity stored to maintain its shape.

(6) Storage structures must, in the opinion of the county committee, have a usable life of at least 10 years.

(7) Loans may be approved for financing additions to or modifications of an existing storage facility to increase storage capacity if the county committee determines that:

(i) The modification is necessary to increase the storage capacity of the unit and

(ii) The structure is not a horizontal or bunker type silo.

(8) A storage facility must include ladders and safety devices as the

county committee may require and must be suitable for storing the facility loan commodities for which need is determined.

(c) *Loans not available.* Loans shall not be available to provide storage for commercial use or for storing commodities which the borrower intends to purchase or to store for others. Any facility which is located in working proximity to any commercial storage operation shall be deemed to be a part of such operation.

[47 FR 33669, Aug. 4, 1982]

§ 1474.6 Term of loan.

The maximum term of the loan shall be five years from the date of the Promissory Note and Security Agreement. The term of an individual loan, however, may be extended and reextended for terms of not to exceed one year each if the approving State or county committee determines in writing that the borrower is unable to meet the current payment when due because of conditions beyond the borrower's control.

[46 FR 20152, Apr. 3, 1981]

§ 1474.7 Security for loan.

(a) *All States except Louisiana.* All loans shall be secured by a promissory note and security agreement covering the farm storage facility. The promissory note and security agreement shall grant CCC a security interest in the collateral and shall be perfected in the manner specified by the Uniform Commercial Code adopted in the applicable State. CCC's security interest in the collateral shall constitute the sole security interest in such collateral except for prior liens on the underlying realty which by operation of law attach to the collateral if it is or becomes a fixture. If any such prior lien on the realty will attach to the collateral, CCC may require that a subordination agreement or a disclaimer of any interest in the collateral as fixtures be obtained in writing from each person, other than the borrower, having any interest in the real estate on which the collateral is to be located.

(b) *Louisiana.* All loans shall be secured by a chattel mortgage covering the farm storage facility which shall be filed or recorded as required by State law and shall constitute the sole security interest in the collateral, except for prior liens on the underlying realty which by operation of law attach to the collateral if it is or becomes a fixture. If any such prior lien on the realty will attach to the collateral, CCC may require that a severance agreement be obtained from each person, other than the borrower, having any interest in the real estate on which the collateral is to be located.

NOTE: Every State, except Louisiana, has adopted in some form Article 9 of the Uniform Commercial Code (UCC) entitled "Secured Transactions." In States which have adopted Article 9, CCC's security interest in loan collateral is perfected by filing a financing statement. Louisiana law, however, requires the filing of a chattel mortgage.

(c) *Real estate lien requirement.* A lien on real estate shall be required for any loan, regardless of the loan amount, if the approving committee determines that additional security is needed to protect CCC's interest. Such lien shall be in the form of a real estate mortgage, deed of trust, or other security instrument approved by CCC. At the discretion of the approving State or county ASC committee, the lien may be a first or second lien on the land on which the facility is located, or a first or second lien on such other real estate as may be acceptable to CCC.

(d) *Fees.* Fees for filing or recording financing and continuation statements or chattel mortgages and any extensions thereof shall be paid by CCC. All other filing or recording fees, including those involving real estate liens, shall be paid by the borrower.

[39 FR 38632, Nov. 1, 1974, as amended at 47 FR 33670, Aug. 4, 1982]

§ 1474.8 Amount of loan and loan application approvals.

(a) *Cost.* The cost on which the loan shall be based is the "net cost" of the facility and/or accessories and services, which is the actual cost to the applicant, after deduction of any discount or rebate. Net cost may include the purchase price, local sales taxes payable by the purchaser, costs for transportation, delivery, site preparation, erection or installation, and the cost of materials and labor for concrete work. Net cost shall not include the cost of materials and labor for electrical and handling equipment or wiring and the cost of transportation, delivery, site preparation, erection or installation of such equipment or wiring, used or secondhand material, or any other item which is determined to be ineligible for loan.

(b) *Amount of loan.* The amount of any farm facility loan, when added to the outstanding balance of any facility loan, shall not create for the applicant an aggregate outstanding balance in excess of $25,000 and shall not exceed the smaller of:

(1) 70 percent of the net cost of the applicant's needed storage, or

(2) The prorated cost of the applicant's storage which is needed and suitable for the storage of the applicable commodities when a storage structure has a larger capacity than the applicant's needed capacity.

(c) *Loan application approvals.* (1) The county committee may approve or disapprove loan applications up to the maximum amount unless a lower limit has been established by the State committee.

(2) The State committee shall approve or disapprove all other loan applications.

(3) A loan application shall not be approved where the approving authority determines that approval would not be in the best interest of the program.

(d) *Expiration of approvals.* If there has been no disbursement of the loan 4 months after the date the loan application was approved, the approval shall become null and void unless it is extended in writing by the approving State or county committee for a stated period not to exceed an additional 4 months: *Provided, however,* That the Executive Vice President, CCC, or his designee, may extend the approval for such additional periods of time as he may deem justified by the circumstances.

[45 FR 42246, June 24, 1980, as amended at 47 FR 33670, Aug. 4, 1982]

§ 1474.9 Downpayment.

A minimum downpayment representing the difference between (a) the amount of the loan determined pursuant to § 1474.8(b), and (b) the net cost of eligible storage facilities determined pursuant to § 1474.8(a) shall be made by the loan applicant to the supplier or contractor before the loan is disbursed. The minimum downpayment shall be in cash except that a reasonable trade-in allowance for farm equipment or other tangible property may be considered as cash. If the reasonable trade-in allowance of such equipment or property is in excess of the required minimum downpayment, the amount of the loan shall be reduced by the amount of such excess. If the trade-in allowance is in excess of a reasonable market value, only the reasonable market value may be counted toward the minimum downpayment. Any additional amount required to equal the minimum downpayment shall be paid in cash by the applicant to the supplier or contractor before the loan is disbursed. A downpayment shall not include any discount, rebate, credit, deferred payment, post-dated check, or promissory note to the supplier or contractor.

[47 FR 33670, Aug. 4, 1982]

§ 1474.10 Interest and late payment charges.

Loans shall bear interest at the rate set forth in a notice published in the FEDERAL REGISTER. If a loan installment is not paid when it is due and payable, a late payment charge shall be applied against the delinquent debt as provided in 7 CFR Part 1403 (46 FR 61442).

[47 FR 33670, Aug. 4, 1982]

§ 1474.11 Repayment of loan and acceleration of maturity date.

(a) The principal amount of the loan shall be repayable in equal annual installments together with interest as provided for in § 1474.10 on the unpaid balance from the date of disbursement of the loan or date of the last repayment, whichever is later, up to, but not including the date of repayment. The first installment, including interest on the unpaid balance, shall be due and payable during the 12-month period beginning on the first anniversary date of the note. A like installment shall be similarly due and payable during the 12 months following each anniversary date thereafter until the principal, together with the interest thereon, has been paid in full. The payment of each such installment may be by cash, check, or money order. Any installment which is due and payable and which has not been paid in cash, or by check or money order, shall be paid by deduction from any amounts which are otherwise due the borrower from price support loans and purchases, as well as storage payments. However, any such deductions shall not be made until after service charges and amounts due prior lienholders have been deducted. Payments shall be applied first to accrued interest and then to principal.

(b) Each installment must be paid not later than the end of the applicable 12-month period. Upon failure to pay any installment by the end of such period, the loan may be declared delinquent and, at the option of the approving State or county committee, the loan may be called and the entire unpaid amount of the loan shall become immediately due and payable. Any delinquent loan or any past due amount on any annual payment may be deducted and paid out of any amounts due the borrower under any program carried out by the Department of Agriculture or any other agency of the United States in accordance with the regulations at 7 CFR Part 13. If the maker of the note breaches any convenants, agreements, terms, or conditions to be performed under §§ 1474.1 to 1474.17 or under the loan application, promissory note and security agreement, chattel mortgage, or other security instruments securing the loan, or under any other instruments executed in connection with the loan, or if the collateral is used in connection with any commercial operation including, but not limited to, elevators, warehouses, dryers, or processing plants, during the life of the loan, CCC may declare the entire indebtedness immediately due and payable.

(c) The loan may be paid in full or in part by the borrower at any time before maturity.

(d) Upon payment of a loan, the county committee shall release or obtain the release of security instruments, upon request therefor by the borrower, or as otherwise required by State law. The chairman or a member of the county committee or the county executive director is authorized to act as agent of CCC in releasing or obtaining the release of security instruments.

[39 FR 38632, Nov. 1, 1974, as amended at 47 FR 33670, Aug. 4, 1982]

§ 1474.12 Taxes.

The borrower must covenant to pay all real and personal property taxes which may affect CCC's security interest in all collateral securing the note evidencing the loan. To protect its interests, CCC may pay any unpaid taxes and add the amount of such payments to the borrower's indebtedness. CCC may provide in the loan instruments for increasing the lien on the collateral by the amount of such payments.

[39 FR 38632, Nov. 1, 1974]

§ 1474.13 Maintenance and liability.

The borrower shall maintain the loan collateral in good condition and available for the storage of one or more of the facility loan commodities described in § 1474.4(a). Until the loan has been repaid, the borrower shall be liable for all damages to or destruction of such collateral.

[47 FR 33671, Aug. 4, 1982]

§ 1474.14 Disbursement of loan.

The disbursement of the loan by CCC will be made when the farm storage facility has been delivered, erected, constructed, assembled, or installed, and, when required, the county committee, or a representative of the county committee, has inspected and approved such facility. Disbursement will be made only if the borrower furnishes satisfactory evidence of and certifies to the (a) total cost of the facility and (b) payment of all debts on the facility in excess of the amount of the loan. Disbursement shall be made jointly to the borrower and to the contractor(s) or supplier(s). However, disbursement may be made to the borrower alone if the borrower submits satisfactory evidence to the county committee that the borrower has paid to the contractor(s) or supplier(s) all amounts which are due and owing on the facility.

[47 FR 33671, Aug. 4, 1982]

§ 1474.15 [Reserved]

§ 1474.16 Sale or conveyance of security and assumption of loan indebtedness.

(a) The collateral securing a loan shall be sold by CCC when a loan has been called and not repaid or when the borrower requests the county committee to sell the collateral before repaying the loan. When the borrower desires to sell or convey the facilities or other property securing a loan without repaying the loan in full, he shall apply to the county committee for approval of the sale or conveyance on behalf of CCC.

(b) An assumption of the loan may be approved by CCC in the case of a sale of the collateral by CCC or the borrower under paragraph (a) of this section or in the event of the death, incompetency, or disappearance of the borrower. Requests for approval of such assumptions shall be made to the county committee by the borrower or the successors or representatives of a borrower. If such approval is granted, the borrower or his successors or representatives shall execute an assumption agreement with the purchaser or the party assuming the loan. The assumption agreement shall be in the form prescribed by CCC. Such agreements may provide for the assumption of the unpaid balance of both the principal amount of the loan and the interest computed to the date of the assumption and any other charges which may be provided for in the loan application and approval and in the security instruments furnished by the borrower pursuant to § 1474.7.

[39 FR 38632, Nov. 1, 1974, as amended at 47 FR 33671, Aug. 4, 1982]

§ 1474.17 Death, incompetency, or disappearance.

If a person who is entitled to the payment of any sum due in connection with a farm facility loan dies, disappears, or is declared incompetent, either before CCC has issued a draft in payment therefor or after CCC has issued a draft in payment but before the draft is negotiated, payment shall be made to such person's successors or representatives authorized to receive such payment. The order of precedence for payment is set forth in 7 CFR Part 707. Payment shall be made upon proper application therefor (Form ASCS-325) to the office of the county committee which made the loan.

[47 FR 33671, Aug. 4, 1982]

§ 1474.18 Forms.

The following forms shall be used in connection with the Farm Facility Loan Program: CCC-185 Loan Application and Approval; CCC-186 Promissory Note and Security Agreement; CCC-187 Disbursement, Repayment and Inspection Record; CCC-298 Assumption Agreement; CCC-299 Certificate of Title; CCC-308 Supplier's Agreement; CCC-401 Bill of Sale CCC-500 Repayment Record. These forms, and any other form required by State law, may be obtained in the ASCS State and county offices. The reporting and recordkeeping requirements contained herein have been approved by, and subsequent reporting and recordkeeping requirements will be subject to, the approval of the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980.

[47 FR 33671, Aug. 4, 1982]

PART 1475—EMERGENCY LIVESTOCK ASSISTANCE

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AUTHORITY: 7 U.S.C. 1427, and 1471-1471j; 15 U.S.C. 714b and 714c.

SOURCE: 53 FR 40208, Oct. 14, 1988, unless therwise noted.

Subpart—General Provisions

1475.1 General statement.

The regulations in this part set forth he terms and conditions of the pro-rams which may be made available to eligible producers. The objective of these programs is to provide emergency feed assistance to eligible livestock owners in a State, county, or area approved by the Executive Vice President, CCC, where because of disease, insect infestation, flood, drought, fire, hurricane, earthquake, storm, hot weather, or other natural disaster, a livestock emergency exists. These programs also provide feed assistance to eligible livestock owners for the preservation and maintenance of livestock in any county contiguous to a county that has implemented the livestock feed programs until the last day of the eighth month following the month that the livestock feed programs were implemented in the other county. The program or programs which are made available in the event of the occurrence of a livestock emergency shall be determined by the Executive Vice President, CCC.

[53 FR 40208, Oct. 14, 1988, as amended at 54 FR 43944, Oct. 30, 1989]

§ 1475.2 Administration.

(a) This part shall be administered by CCC under the general direction and supervision of the Executive Vice President, CCC. The program shall be carried out in the field by State and County Agricultural Stabilization and Conservation committees (State and county committees).

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations in this part, as amended or supplemented.

(c) The State committee shall take any action required by this part which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, any action taken by such county committee which is not in accordance with this part; or

(2) Require a county committee to withhold taking any action which is not in accordance with this part.

(d) No delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

§ 1475.3 Definitions.

In determining the meaning of the provisions of this part, unless the context indicates otherwise, words importing the singular include and apply to several persons and things, words importing the plural include the singular, words importing the masculine gender include the feminine, and words used in the present tense include the future as well as the present. The following terms shall have the following meanings:

Animal unit **means a unit of measurement** determined by CCC which is necessary for the maintenance of an adult female bovine animal used for beef purposes. Animal units for other types and classes of livestock shall be computed as follows:

(1) 2.00 units-dairy cows;

(2) 2.00 units-bulls 2 years old or older;

(3) 1.00 unit-cattle, beefalo, buffalo, horses, or mules 1 year old or older;

(4) .50 unit-cattle, beefalo, buffalo, horses, or mules, six months old to 1 year old, donkeys 6 months or older, and swine 1 year old or older;

(5) .33 unit-cattle, beefalo, buffalo, horses, mules, or donkeys less than 6 months old, and for swine 6 months to one year old;

(6) .20 unit-swine less than 6 months old and sheep and goats 1 year old or older;

(7) .14 unit-lambs or kids under 1 year old;

(8) .05 unit-turkeys, geese, chickens, and ducks weighing 8 pounds or more; and

(9) .02 unit-turkeys, geese, chickens and ducks weighing less than 8 pounds.

Animal units shall not be established for catfish or other fish used for commercial food production but a feed allowance shall be computed in accordance with § 1475.6 of this subpart.

Approving official means a representative of CCC who is authorized by the Executive Vice President, CCC, to approve an application for assistance made in accordance with this part.

Area means any part of a State
county including Indian reservation

ASCS means the Agricultural Stab
zation and Conservation Service.

Commercial Feedlot means an est
lishment that is primarily engaged
the fattening of beef cattle, goa
swine, and lambs in a confined a
for a period of at least 30 days, on
fee or contract basis for profit.

CCC means the Commodity Cre
Corporation.

County means a county or simi
geographic area as determined
CCC.

Crop year means a period det
mined by CCC which begins on t
date of the grazing of new pastu
growth in the spring and ending
months later.

DASCO means the Deputy Admin
trator or Acting Deputy Administr
tor, State and County Operation
ASCS, U.S. Department of Agric
ture.

Dairy cow means a bovine anim
which is owned or leased for the pu
pose of producing milk and has pr
duced at least 1 calf.

Daily allowance means for all liv
stock, except fish for food, 10 poun
or 12.5 pounds of FGE (6 or 8.5 poun
for eligible Indian-owned livestock
the eligible Indian owner is receivi
grain from CCC under the India
Acute Distress Donation Program
per day per animal unit as provided
§ 1475.6 of this subpart, or less
amount as determined by the State
county ASC committee, except th
for the 1989 and subsequent yea
livestock feed crop losses due to a na
ural disaster, the producer may ele
to take one and only one of the op
tions available.

Dry supplemental feed means a dr
feed ingredient, or combination or dr
feed ingredients, derived as by-prod
ucts from processing feed and fee
grains, oil seeds, meat, fish, citrus
sugar beets, and dairy products tha
are added to other dry feed material
to improve the nutritional balance o
performance or the total feed ration
Antibiotics, emulsifiers, hormones
minerals, and vitamins, as determined
and announced by CCC are also included.

Eligible feed for cost share means any type of feed (feed grain, oilseed meal, premix or mixed or processed feed, liquid or dry supplemental feed, roughage, pasture, or forage) that best suits the owner's livestock operations which is consistent with acceptable feeding practices and which was not produced by the applicant or upon which assistance has not been paid. Any type of crop not normally considered as a feed grain may, as determined by CCC, be considered as a feed grain and be considered in making cost share assistance to the owner. If cost share assistance on such crop is requested by the owner, all such crops produced by the owner shall be considered when making a determination of the quantity of feed available. Such quantities shall not be used in determining the quantity of feed production loss.

Eligible livestock means beef and dairy cattle, sheep, goats, swine, poultry (including egg-producing poultry), equine animals used for food or in the production of food, and fish used for food. Buffalo and beefalo are also included when maintained on the same basis as beef cattle. Eligible livestock used for determining feed assistance are those livestock that are part of a foundation herd (including producing dairy cattle) or offspring or are purchased as part of a normal operation and not to obtain additional benefits under this part. Eligible livestock also includes:

(1) Livestock inherited by the owner, or

(2) Purchased by the owner as part of a complete farm operation.

Equine animals means horses, mules, and donkeys, and includes animals:

(1) Used commercially for human food, or

(2) Kept for producing food and fiber on the owner's farm, such as draft horses, cow ponies, or breeding horses.

Eligible equine animals are limited to the number needed to produce food and fiber on the owner's farm or breed horses and mules to be used to produce food and fiber on the owner's farm, and does not include such animals which are used for recreational purposes or are running wild or uncontrolled on land owned or leased by the applicant.

Equine animals for food means those horses which are maintained for commercial sale to food processors for human consumption.

Executive Vice President means the Executive Vice President, CCC, or a designee of the Executive Vice President.

Feed dealer or manufacturer means a person engaged in selling processed feed who is approved by the county committee to advance processed feed from such person's inventory to approved applicants when requested to do so by the county committee under a feed dealer's agreement executed with CCC.

Feeding period means: (1) For all livestock, except fish for food, the period beginning on the later of the date of application for assistance or the authorization of the implementation of the program and ending on the earlier date of when feed becomes available, or the end of the livestock feed program crop year, or the end of the grazing period if pasture (including wheat pasture) is the only crop produced.

(2) For fish for food the feeding period means beginning on the later of the date of the application for assistance, or the authorization for implementation of the program and ending on the earlier of the estimated date the producer intends to harvest the fish, or the anticipated date when water temperature in the pond is expected to be 54 degrees Fahrenheit or less, and or the current feeding period established for other eligible livestock if other livestock are included on the application, or the end of the livestock program crop year.

Fish for food means those fish which are maintained for commercial sale to restaurants, food stores, fish haulers and processors for human consumption.

Foundation Livestock means eligible livestock that are kept for breeding and the reproduction of such livestock.

Handler means any person approved by the county committee to perform designated services in accordance with a grain handler agreement executed by such person and CCC.

Husbander means owner as defined in this subpart.

Liquid supplemental feed means that which contains protein urea or other non-protein nitrogen, minerals, and vitamins that are added to molasses or other liquids resulting in a product that is mixed, handled, and fed in a liquid form. They may also include such products as emulsifiers for fat, certain antibiotics, and hormones.

Livestock producer means a person that is actively engaged in farming, ranching, or aquaculture and that receives a substantial amount of total income from the production of grain and livestock, that is an established producer or husbander of livestock or a dairy producer who is:

(1) A citizen of, or legal resident alien in the United States;

(2) A farm cooperative, private domestic corporation, partnership, or joint operation in which a majority interest is held by members, stockholders, or partners who are citizens of, or legal resident aliens in the United States, if they are engaged in livestock production or husbandry or dairy production;

(3) Any Indian tribe of the Indian Self-Determination and Education Assistance Act;

(4) Any Indian organization or entity chartered under the Indian Reorganization Act;

(5) Any tribal organization of the Indian Self-Determination and Education Assistance Act; and,

(6) Any economic enterprise of the Indian Financing Act of 1974.

Natural disaster means disease, insect infestation, flood, drought, fire, hurricane, earthquake, storm, hot weather, or other natural disaster.

Owner means the person who is actively engaged in farming as determined in accordance with Part 1497 of this chapter, who receives 10 percent or more of the owner's total gross income from the production of grain or livestock or the person who jointly owns the eligible livestock to be fed with the eligible feed which is to be purchased or acquired through donation in accordance with this part or with respect to which cost-share assistance is provided in accordance with this part. A person who pledges livestock as security for a loan shall be considered as the owner for the purpose of this part if all other requirements of this part are met. Notwithstanding any other provisions of this section, livestock leased under a contractual agreement which has been in effect at least three months for poultry or fish and six months for other livestock on the date of application for assistance under this part requires the lessee to furnish the feed for such livestock and provides for a beneficial interest in such livestock such as the right to market a share of the increase shall be considered as being owned by the lessee. An owner does not include: (1) State or local governments or subdivisions thereof; and (2) any individual or entity which is determined to be ineligible to receive payments or benefits in accordance with Part 1498 of this chapter.

Person eligible for assistance means an individual, partnership, corporation, association, estate, trust, or other business enterprise or legal entity.

Poultry means domesticated chickens, ducks, geese and turkeys.

Premix means a formulation of one or more microingredients, such as vitamins, minerals, drugs, or other ingredients when one type of ingredient is evenly mixed with one or more other types of ingredients or with a carrier. One vitamin mixed together solely with another kind of vitamin, or one mineral mixed together solely with another kind of mineral is not considered a premix.

Processed feed means feed grain which contains not more than 90 percent by weight of any one feed grain which is in ground, rolled, steamed, pelletized, or otherwise processed provided that all of the ingredients of the whole grain are included in such mixture.

Program means an emergency livestock program authorized by this part.

Secretary means the Secretary of Agriculture or a designee of the Secretary.

State means any State of the United States, the Commonwealth of Puerto Rico, the Virgin Islands, or Guam.

State committee, State office, county committee, or county office, means the respective ASC committee or ASCS office.

Substantial loss of production means the amount of feed produced by the owner (including pasture, forage and feed in storage) during the crop year which, because of a natural disaster, is at least 40 percent below the amount determined by the approving official, or such other amount as determined by the Executive Vice President, CCC, to be the normal production produced by the owner with respect to lands operated by the owner. Any loss of feed production which the approving official determines is attributable to:

(1) Overgrazing or

(2) Farming practices not recognized as being normal in the area shall not be included in determining a substantial loss of production. Loss of feed production on crop land leased by the producer, under a new lease, after the beginning of the livestock feed program crop year shall not be included in determining a substantial loss of production unless otherwise allowed by CCC. Loss of feed production on pasture land leased by the producer, under a new lease, less that 90 days before filing of the CCC-642 by the producer shall not be included in determining a substantial loss of production unless otherwise allowed by CCC.

Warehouse means a warehouse which is currently operating in accordance with a valid Uniform Grain Storage Agreement executed with CCC.

[53 FR 40208, Oct. 14, 1988 as amended at 54 FR 43944, Oct. 30, 1989; 54 FR 46608, Nov. 6, 1989]

§ 1475.4 Program availability.

(a) Whenever the Governor of a State determines that a livestock emergency due to a natural disaster exists in a State, or an area of the State, or a County ASC committee determines that such an emergency exists in the county or area within the county the Governor or the county ASC committee may submit a request for a determination by the Secretary of Agriculture, of a livestock emergency in the State, county, or area thereof and for emergency livestock feed assistance under this part. A determination that a livestock emergency exists due to natural disaster may also be made for a State, county, or area thereof by the Secretary of Agriculture whether or not a request for assistance is submitted. The request of a Governor or county ASC committee for a livestock emergency determination and for emergency livestock feed assistance may include recommendations to the Secretary of Agriculture those options that will fully use feed available through local sources. The request submitted by the county committee for a livestock emergency determination must be submitted to the State committee and must contain:

(1) A County Feed Loss Assessment Report, Form CCC-650;

(2) If the request is due to the occurrence of drought or excess moisture, the rainfall data by month expressed in inches and percent of normal for the current crop year and the 2 previous calendar years;

(3) The type of assistance requested; and

(4) A report by the county committee and a State committee representative stating existing production conditions;

(b) The State committee shall forward such a request with a recommendation of whether the request should be approved to DASCO.

(c) The Executive Vice-President, CCC, shall make a final determination as to whether a livestock emergency exists not later than 30 days after receipt of any request made in accordance with paragraph (c) of this section and shall notify the Governor or the county committee of such determination.

(d) Owners in any county contiguous to a county that has been designated as a livestock emergency county and has implemented the livestock feed programs shall have until the last day of the eighth month following the month that the other county implemented the livestock feed programs to be eligible to apply for emergency livestock assistance under this part.

[53 FR 40208, Oct. 14, 1988 as amended at 54 FR 43945, Oct. 30, 1989]

§ 1475.5 Owner eligibility.

Subject to the terms and conditions in this part, an owner may be approved to participate in a program established in accordance with this part.

§ 1475.6 Application and approval.

(a) Any owner of livestock may file an application for participation in a program made available by CCC in an approved county. When an application is filed, the owner or a duly authorized representative of the owner shall execute the certification contained in Form CCC-642.

(b) An application must be filed at the county office in an approved county or in a county office in a contiguous county.

(c)(1) The owner, or a duly authorized representative of an owner, shall:

(i) Furnish all the information specified on the application;

(ii) Certify that the owner meets the requirements of the applicable program; and

(iii) Provide any other information which the approving official determines to be necessary to determine the owner's eligibility.

(2) All applications for assistance due to production losses because of a livestock emergency determined to exist prior to January 1, 1989, shall be filed for payment or benefit on or before March 31, 1989. Any determination of eligibility and assistance for applications filed for 1988 crop year production losses because of a livestock emergency shall be based on the following:

(i) Any loss of production computed shall be reduced and feed on hand increased due to the receipt of other goverment benefits, including FCIC crop insurance indemnity payments less premiums with respect to feed normally grown by the owner;

(ii) A daily feed allowance of 10 pounds of FGE per day per animal unit;

(iii) A cost-share rate of 50 percent of the cost of purchased eligible feed not to exceed five cents per pound FGE;

(iv) All eligible livestock in the application for assistance under this part.

(3) For livestock emergencies determined to exist after January 1, 1989:

(i) Applications must be filed prior to January 1, of the calendar year following the year in which the livestock emergency occurred, and

(ii) With respect to producers in a county contiguous to a county approved for disaster assistance, applicants must file not later than last day of the eight month period after the Secretary determines that a livestock emergency exists in the other county.

(iii) All 1989 and subsequent crop years' applications may be computed at the producer's option by using the provision in paragraph (c)(2) of this section or the following provisions:

(A) Any loss of production otherwise computed shall be reduced and feed on hand increased due to the receipt of other government benefits, except FCIC crop insurance indemnity payments with respect to feed normally grown by the owner;

(B) A daily feed allowance of 12.5 pounds of FGE per day per animal unit;

(C) A cost-share rate of 42.5 percent of the cost of purchased eligible feed not to exceed five cents per pound FGE;

(D) The producere with swine, poultry or fish and grazing livestock shall have the option to include only eligible livestock that do not normally graze or use forage, in the application for assistance under this part; and

(E) A producer who elects to purchase CCC-owned feed grain will have the remaining allowance on the application reduced by the result of multiplying the amount of CCC-owned grain purchased times 1.176.

(d)(1) With respect to those programs which require that an eligible livestock owner must have suffered a substantial loss of production of feed, in determining whether a substantial loss of production of feed exists, the amount of feed which is produced by the owner shall be converted to a feed grain equivalent. A feed grain equivalent shall be determined by CCC by dividing the total digestive nutrients (TDN) of the crop (as reflected in Morrisons Feed and Feeding) or (as reflected in the National Academy of Science Series) by the TDN for grain sorghum. The amount of the loss of production shall be determined by comparing the normal feed production produced on the affected acreage by the owner to the actual production of feed on the affected acreage. A loss of pasture production shall be based on the normal carrying capacity of such pasture.

(2) A substantial loss of production may, as determined by CCC, include feed stocks produced in the current crop year which were damaged or destroyed by a natural disaster while in storage. Feed stocks not totally destroyed shall be appraised on the basis of the remaining value of such stocks as livestock feed.

(3) The determination of a substantial loss of production with respect to pasture, range, or other grazing land shall be computed based on the loss of current year grazing. County committees shall establish the normal carrying capacity for each type of grazing for the county and the maximum degree of loss for each type of grazing. Any production loss attributed to overgrazing in a prior crop year shall be excluded.

(4) In determining a substantial loss of production with respect to feed grain, silage, green chop, hay, and other roughage, the current crop year acreage and normal yields for such crops shall be used.

(5) Any loss of production otherwise computed shall be reduced due to the receipt of other government benefits, except as provided in paragraph (c)(3)(iii)(A)-(E) of this section for FCIC crop insurance indemnity payments and 1988 and 1989 crop disaster payments which are paid the owner with respect to livestock feed normally grown by the owner provided no reduction shall be made for CCC-owned grain that is donated to eligible Indian livestock owners under the Indian Acute Distress Donation Program.

(e) Feed on hand owned by the owner of eligible livestock on the date of application shall include, but is not limited to:

(1) Feed grain, silage, green chop, hay, pasture, and other roughage;

(2) Any prior crop year or current crop year production of feed still on hand;

(3) Feed grain stored in a bin or other storage facility under a previous year CCC price support loan that is in excess of the amount of grain pledged as collateral for such loan;

(4) Any prior crop year or current crop year feed grain pledged as collateral for a CCC price support loan that has been redeemed and is still on hand;

(5) Any prior crop year or current crop year feed that is sold during the current crop year by considering the date of delivery of the feed as the date sold;

(6) Any feed grain pledged as collateral for a CCC price support loan during the current crop year;

(7) Pasture, range, or other grazing land owned by the owner and any benefits from any pasture or grazing rights purchased or leased as part of the owner's normal farming operation;

(8) Grazing benefits from hay or grain crops which are grazed instead of harvested including any temporary grazing of crops such as wheat;

(9) Temporary winter cover crops available for grazing;

(10) Any feed produced by the owner in a county or an area not designated as an approved county or area;

(11) Any feed utilized in a feedlot for the commercial feeding of livestock;

(12) Any prior or current year feed sold or delivered for sale during the current crop year including any current year grain pledged as collateral for a CCC price support loan;

(13) Any donated feed on hand except for feed grain donated by CCC under the Indian Acute Distress Donation Program.

(14) Except as otherwise provided in this section, any other feed that may be determined by approving officials in accordance with instructions issued by DASCO including adjustments based upon other government benefits such as crop disaster payments except for 1988 and 1989 crop years which are paid to the owner.

(i) FCIC indemnity payments less the premium, if applicable in accordance with the election made by the producer under paragraph (c) of this section; and

(ii) Crop disaster payments which are paid to the owner except for 1988 and 1989 crop years, if applicable in accordance with the election made by the producer under paragraph (c) of this section; and paragraph (c)(3)(iii)(A)-(E) of this section.

(f) The total quantity of feed available to the owner shall be the quantity owned as of the date of application minus any purchased feed on hand.

(g)(1)(i) The gross feed allowance determined with respect to an owner of livestock, other than fish for food, shall not exceed the product obtained by multiplying:

(A) The smaller of 10 pounds or 12.5 pounds, of FGE (6 or 8.5 pounds for eligible Indian owned livestock if the eligible Indian owner is receiving donated grain from CCC under the Indian Acute Distress Donation Programs) per day per animal unit, as applicable, in accordance with paragraph (c) of this section, or a lesser quantity determined to be adequate by the State or county ASC committee, times:

(B) The number of days in the feeding period; times

(C) The number of eligible animal units.

(ii) The net feed allowance determined with respect to an owner shall be the gross feed allowance less the total quantity of feed available including feed grain, hay, silage, pasture and range converted to FGE and any other source of feed determined by the approving official to be available to the owner for feeding eligible livestock during the feeding period.

(iii) The total allowance determined with respect to an owner for the entire feeding period shall be the smaller of the net allowance or the amount of feed production loss by the owner.

(2) The gross feed allowance determined with respect to an owner of fish for food shall not exceed the average pounds of fish owned by the producer times the number of days in the feeding period times 1 percent. The average weight of the fish shall be determined by:

(i) Determining the estimated average weight of the fish at the time of application;

(ii) Determining the estimated average weight of the fish on the ending date of the feeding period.

(iii) Dividing the sum of paragraph (g)(2)(i) and (ii) of this section by 2.

(h)(1) The country committee designee shall review each applicatio The county committee and, if desi nated by the county committee, t county executive director, is autho ized to approve or disapprove all app cations provided the applicant is not county committee member or an ASC employee.

(2) The State committee, or a desi neee, is authorized to approve or di approve applications of the count committee members and all ASCS em ployees except with respect to th State Executive Director.

(3) DASCO, or a designee shall ap prove or disapprove applications State committee members and th State Executive Director.

(4) All applications forwarded to higher authority for consideratio shall be accompanied by county an State committee recommendations, a may be applicable. No applicatio shall be approved unless the owne meets all eligibility requirements. Information furnished by the applicant and any other information, includin knowledge of the county and State committee members concerning the owner's normal operations, shall be taken into consideration in makin recommendations and approvals. If information furnished by the owner is incomplete or ambiguous and sufficient information is not otherwise available with respect to the owner's farming operations in order to make a determination as to the owner's eligibility, the owner's application shall not be approved until sufficient additional information is provided by the owner.

(5) An applicant shall be notified in writing of the action taken with respect to an application by the approving official.

[53 FR 40208, Oct. 14, 1988 as amended at 54 FR 43945, Oct. 30, 1989; 54 FR 46608, Nov. 6, 1989]

§ 1475.7 Adjustment of total allowance.

(a)(1) The determination of the total allowance available to the owner may be decreased as the result of assistance made available to the owner after such a determination has been made.

(2) If there is an increase or a reduction in the number of the owner's eligible livestock, this fact shall be promptly reported to the approving official and such official shall make an adjustment in the owner's net allowance. This increase or reduction shall be made by revising the net allowance on the application by the result of multiplying the amount of the change in animal units, times the number of days remaining in the feeding period, times the daily allowance. This adjusted net allowance may be further adjusted by the approving official in order to establish a total allowance which the approving official determines to be adequate. After adjusting the net allowance and recomputing the total allowance, the county ASCS office shall notify the owner of the current total allowance.

(3) If, due to a change in total allowance, an excess amount of assistance was provided to the owner, the owner must refund such excess including applicable interest as determined in accordance with § 1475.16 of this subpart.

(b) If additional feed, including pasture, becomes available to the owner from production of any land operated by the owner during the feeding period, this fact shall be promptly reported to the county office and proper adjustments shall be made.

[53 FR 40208, Oct. 14, 1988 as amended at 54 FR 43946, Oct. 30, 1989]

§ 1475.8 Disposition of feed.

(a)(1) Feed grain or other livestock feed obtained under this part shall not be exchanged for any ingredients, services, cash, credit, or any other thing of value.

(2) An owner may feed eligible livestock feed to any livestock the applicant owns, after a determination has been made that the owner's eligible livestock were the only livestock used in determining the owner's total allowance.

(b) An amount of feed equal to that acquired under the program shall be fed to the applicant's eligible livestock.

(c) The total quantity of feed purchased in accordance with this part must be fed to the owner's livestock within the feeding period. The county committee may consider feed grain as having been fed within the feeding period if the county committee determines that failure to timely feed the total allowance of such feed grain was due to conditions beyond the control of the owner. The amount of feed grain remaining which may be considered as being timely fed shall not exceed a 10-day supply of feed for the producer's eligible livestock.

(d)(1) If the owner does not feed the feed grain or other livestock feed as provided in paragraphs (a) and (b) of this section, with respect to the unfed amount the owner shall pay to CCC:

(i) With respect to purchased CCC-owned feed grain, the difference between the price paid for such feed grain and the posted county price thereof, on the date the payment was received, or such other value as determined by CCC, based on the price of such type of feed grain sold in the county where the application was made; and

(ii) With respect to cost-share assistance, the amount of assistance received plus interest as determined by CCC.

(2) If the owner has failed to report a change in the livestock operation of the owner as required by this subpart and excess assistance was provided to the owner, the owner shall pay to CCC:

(i) With respect to purchased CCC-owned feed grain, the difference determined under paragraph (d)(1)(i) of this section for any feed grain which was purchased in excess of the quantity that CCC would have approved if such report had been made,

(ii) With respect to cost-share assistance, the amount of cost-share assistance which was received plus interest, as determined by CCC, based on the quantity in excess of the quantity that CCC would have approved if such report had been made.

(iii) The kind and quantity of feed grain on which price adjustments shall be based shall be the kind and quantity acquired from CCC.

[53 FR 40208, Oct. 14, 1988 as amended at 54 FR 43946, Oct. 30, 1989]

§ 1475.9 Termination and suspension of program.

The county committee may at any time during the operation of the program recommend suspension or termination of the program. The State committee may at any time during the operation of the program suspend or terminate the program with the concurrence of DASCO. DASCO may suspend or terminate the program at any time. The suspension or termination of the program in a county shall not apply to any assistance approved prior to the effective date of the suspension or termination of the program. Producers who filed an initial application prior to the termination of the program shall be eligible to file subsequent applications.

[54 FR 43946, Oct. 30, 1989]

§ 1475.10 Maintenance of books and records.

Warehousemen, handlers, dealers, and owners shall maintain and retain financial books and records which will permit verification of all transactions with regard to such deliveries for at least three years, following the end of the calendar year in which assistance was provided, or for additional period as CCC may request. An examination of such books and records by a duly authorized representative of the United States Government shall be permitted at any time during business hours. The owner shall, within 30 days after a request by the county committee, submit any requested information with respect to the owner's livestock feeding operation.

§ 1475.11 Liens and claims of creditors; setoffs.

Any payment or portion thereof due any person under this Part shall be allowed without regard to questions of title under State law, and without regard to any claim or lien in favor of any person except agencies of the U.S. government. The regulations governing set-offs and withholdings found at Part 13 of this title shall be applicable to this Part.

§ 1475.12 Assignments of payments

Payments which are earned by a producer under the livestock feed programs may be assigned in accordance with the provisions of 7 CFR Part 709.

[54 FR 43946, Oct. 30, 1989]

§ 1475.13 Limitation of authority.

No delegation herein to a State or county committee or a commodity office shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under this part or from reversing or modifying any determination made by a State or county committee or employee of the Department of Agriculture.

[53 FR 40208, Oct. 14, 1988. Redesignated at 54 FR 43946, Oct. 30, 1989]

§ 1475.14 Appeals.

Any person who is dissatisfied with a determination made with respect to this part may make a request for reconsideration or appeal of such determination in accordance with the appeal regulations set forth at Part 780 of this chapter.

[53 FR 40208, Oct. 14, 1988. Redesignated at 54 FR 43946, Oct. 30, 1989]

§ 1475.15 Misrepresentation, scheme or device.

A person who is determined by the State committee or the county committee to have:

(a) Adopted any scheme or other device which tends to defeat the purpose of this program;

(b) Made any fraudulent representation; or

(c) Misrepresented any fact affecting a program determination shall be ineligible to receive assistance under this program with respect to the crop year involved.

[53 FR 40208, Oct. 14, 1988. Redesignated at 54 FR 43946, Oct. 30, 1989]

§ 1475.16 Refunds to CCC.

(a) In the event there is a failure to comply with any term, requirement, or condition for payment arising under this part, and if any refund of a payment of CCC shall otherwise become due in connection with this part, all payments made under this part to any person shall be refunded to CCC, together with interest and late payment charges as provided for in this paragraph.

(b) Any person who receives benefits in accordance with this part, who has been determined to be ineligible to receive such payments shall be jointly and severally liable for any refund, including related charges, which is determined to be due CCC for any reason under the terms and conditions of this part.

(c) Interest shall be charged with respect to any refund which is determined to be due CCC because of actions on the part of the producer as provided in Part 1403 of this chapter, at the interest rate applicable to CCC Commodity loans on the date the payment or benefit was received until such time as late-payment charges become applicable, shall accrue from the date of the disbursement by CCC or with respect to benefits made in accordance with this part, the date payment was received for the grain shall accrue from the date of such disbursement or payment was received. Late-payment charges shall be assessed in accordance with the provisions of Part 1403 of this chapter.

[54 FR 43947, Oct. 30, 1989]

§ 1475.17 Estates, trusts, and minors.

(a) Program documents executed by persons legally authorized to represent estates or trusts will be accepted only if such person furnishes evidence of the authority to execute such documents.

(b) A minor who is an owner shall be eligible for assistance under this subpart only if such person meets one of the following requirements:

(1) The right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and the applicable program documents are executed by the guardian; or

(3) A bond is furnished under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

[53 FR 40208, Oct. 14, 1988. Redesignated at 54 FR 43946, Oct. 30, 1989]

§ 1475.18 Death, incompetency, or disappearance.

In the case of death, incompetency or disappearance, of any owner who is eligible to receive assistance in accordance with this part, such person or persons specified in Part 707 of this title may receive such assistance.

[53 FR 40208, Oct. 14, 1988. Redesignated at 54 FR 43946, Oct. 30, 1989]

§ 1475.19 Violations.

(a) *Disposal of grain.* (1) If the owner has failed to utilize the entire quantity of livestock feed purchased under a program, the owner shall not dispose of any remaining quantity of such livestock feed except as specified by CCC.

(2) Except as permitted by CCC, if feed acquired from CCC is made available to any other person, or if a delivery order is used for obtaining grain other than a feed grain, the owner shall be subject to such civil penalties and to such criminal liabilities as are provided by applicable State and Federal statutes.

(b) *Fraudulent representations.* Any warehouseman, handler, dealer, or any other person may be suspended from participation in a program in accordance with Part 1407 of this chapter if such person has:

(1) Made a false certification, representation or report in accordance with this subpart; or

(2) Otherwise failed to comply with any provisions of this part or any contracts entered into in accordance with this part.

(3) The making of such fraudulent representations shall make such person liable in accordance with applicable State and Federal criminal and civil statutes.

[53 FR 40208, Oct. 14, 1988. Redesignated at 54 FR 43946, Oct. 30, 1989]

§ 1475.20 Benefits limitation.

(a) The total amount of benefits that a person, as determined in accordance with Part 1497 of this title, shall be entitled to receive annually under one or more of the programs established under this part, may not exceed $50,000 per calendar year.

(b)(1) Notwithstanding paragraph (a) of this section, for the 1988 calendar year only, the amount of assistance received by a person, as defined in Part 1497 of this title, shall be determined based on the date of sale as shown on the sales receipt for such assistance.

(2) For persons who applied for assistance under this part prior to August 26, 1988:

(i) All receipts with a date of sale between August 26, 1988, and January 1, 1989, which is paid during calendar year 1988 shall be subject to the $50,000 limitation for calendar year 1988;

(ii) All receipts with a date of sale on or after August 26, 1988, which is paid after January 1, 1989, shall be subject to the $50,000 payment limitation for the calendar year in which the payment is made; and

(iii) All receipts with a date of sale prior to August 26, 1988, shall not be subject to payment limitation regardless of when the payment is made.

(3) For persons who applied for assistance under this part on or after August 26, 1988, for the purposes of applying the maximum payment limitation provision for a calendar year, all assistance made on the basis of submitted sales receipts shall be deemed to have been paid in the calendar year in which the cost-share payment is processed.

(c) No person may receive benefits under this part which is attributable to lost production of a feed commodity due to a natural disaster in 1988 to the extent that such person receives a disaster payment in accordance with Part 1477 of this title with respect to such loss of production.

(d) No person may receive 1988 disaster payments in accordance with Part 1477 of this title or payments and benefits in accordance with this part for livestock emergency losses suffered as a result of a 1988 livestock emergency to the extent that such payment or benefits would cause the combined total amount of such payments or benefits to be received by such person to exceed $100,000. A person may elect whether to receive the $100,000 in such payments and benefits as provided in this part, but not to exceed $50,000 in a calendar year, or in a combination of payments and benefits as provided in accordance with this part and Part 1477 of this title.

[53 FR 40208, Oct. 14, 1988. Redesignated and amended at 54 FR 43946, 43947, Oct. 30, 1989]

§ 1475.21 Gross revenue limitation.

A person, as defined in Parts 795 and 1499 of this title, as applicable, who has annual gross income in excess of $2.5 million shall not be eligible to receive assistance under this part. For the purposes of this determination, annual gross income means:

(a) With respect to a person who receives more than 50 percent of such person's gross income from farming, ranching, and forestry operations, the total gross income received from such operations, and

(b) With respect to a person who receives 50 percent or less of such person's gross income from farming, ranching, and forestry operations, the total gross income from all sources.

[53 FR 40208, Oct. 14, 1988. Redesignated at 54 FR 43946, Oct. 30, 1989]

§ 1475.22 Paperwork Reduction Act assign numbers.

The information collection requirements contained in these regulations (7 CFR Part 1475) have been approved by OMB under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Number 0560-0029.

[54 FR 43947, Oct. 30, 1989]

Subpart—Livestock Preservation Donation Program

§ 1475.101 General statement.

(a) This subpart sets forth the terms and conditions of the Livestock Preservation Donation Program. This program shall only be in effect upon a determination that a livestock emergency exists in a State, county or area and it has been announced that this program is in effect. Information regarding the availability of the program in a county may be obtained from State and county ASCS offices.

(b) In order to be eligible to participate in the program, an owner of livestock must have suffered a substantial loss of current year production of feed and of any purchased feed. The objective of the program is to provide CCC-owned feed grains to livestock owners who are financially unable to purchase feed, or to otherwise participate in any other program authorized under this part. The owner must establish to the satisfaction of the approving official that:

(1) Without assistance the owner's livestock would perish or be sold at distress prices; and

(2) The owner has insufficient cash or credit to buy feed for eligible livestock.

[53 FR 40208, Oct. 14, 1988, as amended at 54 FR 43947, Oct. 30, 1989]

§ 1475.102 Eligibility.

(a) A livestock owner may be approved to participate in the program if it is determined that in addition to the provisions of §§ 1475.1 through 1475.20 that:

(1) The livestock owners whose need for replacing and repairing losses of buildings, equipment, supplies, and other related matters will leave insufficient cash or credit to buy feed for livestock.

(2) The livestock owner's resources have been so damaged by the disaster that the owner is incapable of buying feed at market prices;

(3) The livestock owner has insufficient cash or credit to buy feed for eligible livestock;

(4) The owner's livestock would perish or be sold at distress prices without donation of feed grains under this program;

(5) The livestock owner does not have sufficient livestock feed to feed the livestock through the period of the emergency; and

(6) The livestock owner is unable to participate in any other livestock program which is currently in effect in accordance with this part.

(b) With respect to the determinations made in accordance with paragraphs (a) (2) through (4) of this section, the approving official must determine that under prevailing local conditions the owner's financial resources preclude the owner from obtaining sufficient quantities of feed from normal suppliers without:

(1) Imperiling continuance of the farming operations;

(2) Placing the owner in default with respect to existing financial obligations;

(3) Causing the owner to engage in unsound borrowing practices; or

(4) Resulting in excessive disposal of livestock by the owner.

(5) Purchased feed shall be considered as an available asset in determining whether an owner is suffering an undue financial hardship. In making this determination, the approving official shall take into consideration the normal financial resources of producers in the area. If the owner is a partnership, the resources of the partnership and all of the partners shall be taken into consideration in determining the eligibility of the partnership to receive assistance.

[53 FR 40208, Oct. 14, 1988, as amended at 54 FR 43947, Oct. 30, 1989]

§ 1475.103 Assistance.

(a) The livestock owner shall establish that the livestock operation and the owner's operation have been so damaged by the disaster that sufficient cash or credit does not exist which may be used to purchase necessary feed grain at present market prices. The owner shall not sell or dispose of in any way, except for feed for the owner's livestock, CCC-donated feed grain. If all donated grain has not been fed by the owner by the end of the emergency period, the owner shall reimburse CCC at a rate equal to the value of the feed grain, as determined by CCC, on the date the feed grain was made available to the livestock owner for any CCC-donated grain which is on hand after the end of the emergency period that exceeds a 10-day supply.

(b) CCC shall designate the kind of CCC-owned feed grain to be donated under this program and the delivery point at which such feed grain shall be made available. The delivery point may be in the eligible emergency county, contiguous county, or any other location as designated by the

Executive Vice-President CCC. In those instances where feed grain is not available in such a county, CCC may reimburse the eligible livestock owner for the cost of transportation of the feed grain at a rate determined by DASCO.

(c) Transportation assistance will be provided to eligible owners based on the smaller of the following:

(1) The loaded mileage from the warehouse storage location to the county line of the county in which the livestock owner is located; or

(2) When the eligible owner delivers grain to a feed dealer for processing, the loaded mileage from the warehouse storage location to such feed dealer's facility.

(d) The maximum amount of CCC-donated feed grain made available to an owner under this subpart shall be limited to the total allowance determined by CCC in accordance with § 1475.6 of this part.

(e) An owner may elect to receive eligible feed grain under the provisions of this subpart from feed grain stored on the livestock owner's farm if such grain has been pledged as collateral for a price support loan. Payment for such feed grain shall be made at the county ASCS office where the loan application was filed. Feed grain purchased by the owner shall not be exchanged for any ingredient, service, cash, credit, or any other thing of value.

[53 FR 40208, Oct. 14, 1988, as amended at 54 FR 43947, Oct. 30, 1989]

§ 1475.104 Feeding period.

The feeding period established under this subpart for eligible owners shall be limited to not more than 150 days.

Subpart—Emergency Feed Assistance Program

§ 1475.201 General statement.

(a) This subpart sets forth the terms and conditions of the Emergency Feed Assistance Program. This program shall be in effect only upon a determination that a livestock emergency exists in a State, county or area and it has been announced that this program is in effect. Information regarding the availability of the program in a county may be obtained from State and county ASCS offices.

(b) In order to be eligible to participate in the program, as owner of livestock must have suffered a substantial loss of production of feed as defined in § 1475.3 of this part. The objective of the program is to provide CCC-owned grain to eligible owners at reduced prices.

§ 1475.202 Sale of CCC-owned grain.

(a) CCC shall designate the kind of CCC-owned feed grain to be sold under this program and the delivery point at which such feed grain shall be made available. The delivery point may be in the eligible county, contiguous county, or any other locations as designated by the Executive Vice-President CCC. In those instances where feed grain is not available in the emergency county or contiguous county, CCC may reimburse the eligible livestock owner for transportation of such feed grain to the owner's eligible county line at a rate determined by DASCO. Sales of CCC-owned grain shall be made in a quantity which does not exceed the total allowance determined by CCC in accordance with § 1475.6 of this part, which will permit feeding of grain to eligible livestock by the owner for a feeding period that will not extend beyond the date feed normally becomes available in the county.

(b) After payment is received by CCC, delivery shall be authorized by issuance of non-transferable delivery orders by CCC stating the kind and quantity of grain to be delivered. Quantities authorized by delivery orders shall not exceed the quantity of grain determined in accordance with paragraph (a) of this section.

(c) The owner shall take physical delivery of the grain as soon as possible after issuance of the delivery order but not earlier than the date of such issuance and not later than a date determined by DASCO which would normally permit feeding of the grain as specified in paragraph (a) of this section. Title and risk of loss to the grain specified in the delivery order and stored at a warehouse or handler's facility shall pass to the owner upon issuance of the delivery order. The owner shall promptly present the delivery order to the warehouseman or handler. CCC shall not be responsible for storage charges after the date of issuance of the delivery order but shall be responsible for handling charges at a rate not to exceed the rate provided in CCC's agreement with the warehouse or the handler. In cases where there is an underdelivery in quantity of the eligible grain, the owner shall not make settlement with the warehouse or handler but shall promptly notify the county office which issued the delivery order and a revised delivery order will be issued to the owner or a refund of underdelivered feed grain will be made to the owner. Differences in quality between the grain delivered to the owner and the grain described in the loading order issued to the warehouseman or handler by the county office shall be settled between the warehouseman or handler and CCC.

(d)(1) Where CCC-owned feed grain is not available in an area in which an eligible county is located and there are no CCC-approved handlers or dealers in such area, CCC shall ship the required quantity of feed grain to the area and consign such grain to the county committee. Title and risk of loss shall pass to the owner upon delivery of the feed grain into the owner's conveyance or whenever the owner takes possession of the feed grain if such possession occurs prior to placing the feed grain in such conveyance.

(2) The sale price shall not be subject to adjustment for the grade and quality actually delivered into the producer's conveyance.

(3) The feed grain shall be weighed at destination if scales approved by CCC are available. If such scales are not available, settlement weights shall be as determined by CCC.

(4) CCC shall bear charges for transportation to the delivery point, for unloading the feed grain from the carrier's conveyance, for loading the feed grain into the owner's conveyance, and for determining the weight of the feed grain.

(e)(1) An owner may elect to receive eligible feed grain under the provisions of this subpart from feed grain stored on the livestock owner's farm if such grain has been pledged as collateral for a price support loan. Payment for such feed grain shall be made at the county ASCS office where the loan application was filed. Feed grain purchased by the owner shall not be exchanged for any ingredient, service, cash, credit, or any other thing of value.

(2) An owner may elect to receive eligible feed grain under the provisions of this section through a feed dealer provided the owner executes a power of attorney authorizing the feed dealer to execute the delivery order on behalf of the owner. Payment for the feed grain shall be made to CCC at the county office where the application for feed grain is filed when requesting the delivery order. Feed grain purchased by a feed dealer on behalf of the owner shall not be exchanged for any ingredient, service, cash, credit, or any other thing of value.

(3) The feed dealer shall provide such county office, in writing, the names of agents, such as company representatives, authorized to sign the delivery order on behalf of the feed dealer at the time of delivery of feed grain. The feed dealer shall:

(i) Take delivery of the feed grain before the expiration date of the delivery order;

(ii) Take physical delivery of the feed grain at each warehouse where the feed grain is located;

(iii) Not be reimbursed for transportation of feed grain received on behalf of the applicant; and

(iv) Present to such county office a statement signed by the owner and feed dealer certifying that the processed feed contained feed grain in the same quantity, type, and same or better grade as purchased by the producer.

(f) An owner who desires to have grain pelletized, ground, rolled, custom mixed, or otherwise processed may do so if the feed is processed from the feed grain purchased from CCC or the feed accepted from the processor is processed from the same kind of feed grain stated on the delivery order which grades the same or better as compared to such feed grain. The quantity of feed grain processed by the processor and delivered to the owner shall be the same quantity as the feed grain purchased from CCC, except for minor milling losses. CCC shall not be responsible for any charges involving processing, bagging, added freight incurred for processing in transit or any other cost which is incurred which would not have been incurred except for the processing of such feed grain.

(g) The sales price of eligible feed grain made available by CCC in response to any livestock emergency determined to exist prior to January 1, 1989, shall be 75 percent of the current basic county loan rate established for the county in which the feed grain is stored and made available for delivery by CCC. If no such county loan rate is established by CCC, the sales price shall be established at a comparable rate as determined by DASCO. With respect to such assistance provided for any livestock emergency determined to occur on or after January 1, 1989, the sales price of eligible feed grain shall be 50 percent of the posted county price determined by CCC in the county in which the feed grain is stored. If no such posted county price is established, the sales price shall be established at a comparable rate as determined by DASCO.

(h) The quantity of feed grain delivered to an owner shall not exceed the total quantity approved for sale by CCC by more than 5 percent. Differences in quantity between the grain delivered to the owner and the quantity of grain described in the delivery order issued to the warehouseman or handler that was removed from the delivery point in excess of 105 percent shall be considered open stocks and shall be settled between the livestock owner and the warehouseman. For any livestock emergency determined to exist prior to January 1, 1989, any excess in quantity of grain delivered to the livestock owner over the quantity of feed grain described in the delivery order issued to the warehouseman or handler between 100 and 105 percent shall be paid by the owner to CCC at 75 percent of the current basic county loan rate established for the commodity in the county in which the feed grain was stored on the date the DF-17 was issued. For any livestock emergency determined to occur on or after January 1, 1989, the differences in quantity between the grain delivered by the livestock owner and the quantity of feed grain described in the delivery order issued to the warehouseman or handler between 100 and 105 percent should be paid by the owner to CCC at 50 percent of the posted county price determined by CCC for the commodity in the county in which the feed grain was stored.

(i) An amount equal to the purchase price times the quantity not delivered to the owner shall be refunded to the owner in those cases in which the total approved quantity shown on the delivery order and paid for by the applicant is not delivered to the owner.

(j) When an owner desires to purchase feed grain pursuant to an approved application, the owner must make a payment to CCC, in the manner specified by the county committee, with respect to the quantity of grain to be purchased prior to issuance of a delivery order for such feed grain. The county committee may waive such prior payment requirement if a State or Federal agency certifies to CCC that such agency will finance part or all of the cost of the purchase. If such agency agrees to make payment directly to CCC as specified by the county committee, such a certification may be accepted by the county committee in lieu of cash to the extent of the amount so certified.

[53 FR 40208, Oct. 14, 1988, as amended at 54 FR 43947, Oct. 30, 1989]

Subpart—Emergency Feed Program

§ 1475.301 General statement.

(a) This subpart sets forth the terms and conditions of the Emergency Feed Program. This program shall be in effect only upon a determination that a livestock emergency exists in a State, county or area, and it has been announced that this program is in effect. The objective of the program is to provide cost-share assistance to eligible owners of livestock for the purchase of necessary feed. Information regarding the availability of the program in a county may be obtained from State and county ASCS offices.

(b) In order to be eligible to participate in the program, an owner of livestock must have suffered a substantial loss of production of feed as defined in § 1475.3 of the part.

§ 1475.302 Cost-share assistance.

(a) An owner of eligible livestock who has submitted an application for participation in the program in accordance with § 1475.1 of this part shall receive cost-share assistance only if the owner presents evidence of the purchase of feed to the approving official. If the approving official determines that the owner has met the conditions set forth in § 1475.1 of this part and cost-share assistance has been authorized with respect to such purchases, the owner shall be reimbursed at the rate specified in paragraph (b) of this section.

(b) The rate of cost-share assistance shall be 50 percent or, if applicable, 42.5 percent of the cost of eligible feed not to exceed five cents per pound FGE dependent upon the appropriate option elected by the producer that best suits his livestock operation as provided in § 1475.6(c)(3) of this part. In no case may assistance be provided with respect to an amount of purchased feed which is greater that the total feed allowance determined in accordance with § 1475.6(g) of this part. For program purposes, premix, mixed, processed, and liquid or dry supplemental feed shall be considered to be feed grain equivalent on a pound for pound basis.

(c) Acceptable evidence which may be presented to an approving official is limited to a sales document or receipt which:

(1) Is signed by the seller, unless the approving official waives such requirement; and

(2) Contains:

(i) The dates of purchase and delivery, and

(ii) The kind, price, and quantity of feed purchased. Cost-share assistance may not be paid with respect to eligible feed until the feed has been delivered to the owner.

(d) Eligible costs of feed purchases are limited to the purchase price paid by the owner at the point of delivery and may include as determined by the approving official:

(1) Costs normally associated with the preparation of mixed or processed feed,

(2) The cost of leasing or purchasing grazing rights for temporary pasture;

(3) The cost of leasing range or other grazing but not to exceed the smaller of:

(i) 50 percent or, if applicable, 42.5 percent of the cost of grazing per eligible animal unit per day dependent upon the appropriate option elected by the producer that best suits his livestock operation as provided in § 1475.6 (c)(3) of this part, or

(ii) An amount announced by the Executive Vice President, CCC; and

(4) The cost of feed for eligible livestock in a feed lot but not to exceed the smaller of:

(i) 50 percent or, if applicable, 42.5 percent of the cost per eligible animal unit per day dependent upon the appropriate option elected by the producer that best suits his livestock operation as provided in § 1475.6 (c)(3) of this part, or

(ii) An amount determined by DASCO.

[53 FR 40208, Oct. 14, 1988, as amended at 54 FR 43948, Oct. 30, 1989]

Subpart—Crash Feed Grain Donation Program

§ 1475.401 General statement.

(a) This subpart sets forth the terms and conditions of the Crash Feed Grain Donation Program. This program shall be in effect upon a determination that a sudden livestock emergency in a State, county or area requires the implementation of the program. The objective of the program is to provide CCC-owned feed grains on a donation basis to livestock which are:

(1) Stranded;

(2) Unidentified by owner; and

(3) In danger of perishing after the occurrence of a sudden natural disaster.

(b) The Crash Feed Grain Donation Program is for use after a sudden major disaster has occurred and conditions are such that livestock cannot be tended to in a normal manner and would probably perish without the implementation of this program. Livestock owners who have their livestock under control and are capable of caring for them are not eligible to receive CCC-donated grain under this subpart.

§ 1475.402 Assistance.

(a) Assistance is for eligible livestock which are commingled, stranded, and unidentified as to the livestock owner.

(b) The State committee, or its designee, shall determine the eligibility and the amount of assistance which shall be made available in the area for donation under this subpart.

(c) CCC-owned grain donated under this program shall not be sold or disposed of in any way except for feed for the livestock stranded and unidentified as to its owner.

(d) CCC shall designate the kind of CCC-owned grain to be donated under this program and the delivery point at which such grain shall be made available. The delivery may be any other location as designated by CCC.

(e) The maximum amount of CCC-donated grain under this subpart shall be limited to the total allowance that the approving official determines is needed for the emergency period.

(f) Assistance shall include the cost of transporting the feed from the delivery point to the affected area.

§ 1475.403 Feeding period.

The feeding period established under this subpart shall not exceed 45 days.

Subpart—Prickly Pear Cactus Burning Program

§ 1475.501 General statement.

This subpart sets forth the terms and conditions of the Prickly Pear Cactus Burning Program. This program shall be in effect only upon a determination that a livestock emergency exists in a State, county, or area and it has been announced that this program is in effect. Information regarding the availability of the program in a county may be obtained from State, and county ASCS offices. The objective of the program is to provide cost-share assistance not to exceed 50 percent of the cost of propane, butane, or kerosene used to burn the spines from prickly pear cactus to make it suitable for livestock feed.

[54 FR 43948, Oct. 30, 1989]

§ 1475.502 Definitions.

"Butane" means either of two isomeric flammable gaseous paraffin hydrocarbons obtained from petroleum or natural gas and used for fuel.

"Kerosene" means a flammable hydrocarbon oil obtained by distillation of petroleum and used as a fuel.

"Propane" means a heavy flammable gaseous paraffin hydrocarbon found in crude petroleum and natural gas and used for fuel.

[53 FR 40208, Oct. 14, 1988, as amended at 54 FR 43948, Oct. 30, 1989]

§ 1475.503 Eligibility

A livestock owner may be approved tc participate in the program if the livestock owner has prickly pear cactus on his or her normal holdings, eligible livestock to use the burned prickly pear cactus and executes the certification contained in form CCC-640.

[54 FR 43948, Oct. 30, 1989]

§ 1475.504 Assistance.

(a) The maximum amount of cost-share assistance under this program shall be limited to 50 percent of the cost of butane, propane, or kerosene used to burn the prickly pear not to exceed 14 cents per day per animal unit.

(b) Prickly pear cactus made suitable for livestock feed shall not be considered as feed on hand in determining whether an owner is eligible to participate in this program or any other program implemented in accordance with this part.

(c) Feed obtained from burning prickly pear cactus for which assistance is obtained under this part shall only be used by the eligible owner to feed such owner's livestock.

[54 FR 43948, Oct. 30, 1989]

PART 1477—DISASTER PAYMENT PROGRAM FOR 1989 CROPS

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AUTHORITY: Title I of the Disaster Assistance Act of 1989 (Pub. L. 101-82); 15 U.S.C. 714b and 714c.

SOURCE: 54 FR 40372, Oct. 2, 1989, unless otherwise noted.

§ 1477.1 General statement.

This part sets forth the regulations for the Disaster Payment Program for the 1989 crop year as provided by the Disaster Assistance Act of 1989 (Public Law 101-82). The purpose of the program is to make disaster payments to eligible producers on a farm that has suffered a loss of production of 1989 crops due to damaging weather or related condition in 1988 or 1989.

§ 1477.2 Administration.

(a) The program will be administered under the general supervision of the Executive Vice President, Commodity Credit Corporation (CCC), and shall be carried out in the field by State and county Agricultural Stabilization and Conservation (ASC) committees.

(b) State and county ASC committees and representatives and employees thereof do not have the authority to modify or waive any of the provisions of this part as amended or supplemented.

(c) The State ASC committee shall take any action required by this part which has not been taken by a county ASC committee. The State ASC committee shall also:

(1) Correct or require a county ASC committee to correct any action taken by such county ASC committee which is not in accordance with this part, or

(2) Require a county ASC committee to withhold taking any action which is not in accordance with this part.

(d) CCC shall determine all yields and prices under this Part and may utilize any agency of the Department of Agriculture in making such determinations. To the extent practicable, CCC will use data provided by the National Agricultural Statistical Service (NASS) and the Farmers Home Administration (FmHA). Any reference in this Part to NASS shall not restrict CCC from using data from other sources.

(e) No delegation herein to a State or county ASC committee shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county ASC committee.

§ 1477.3 Definitions.

In determining the meanings of the provisions of this part, unless the context indicates otherwise, words importing the singular include and apply to several persons or things, words imparting the plural include the singular, words imparting the masculine gender include the feminine as well, and words used in the present tense include the past and future as well as the present. The following terms shall have the following meanings and all other words and phrases shall have the meanings assigned to them in the regulations governing the reconstitution of farms in part 719 of this title or in the regulations applicable to the production adjustment programs for feed grains, rice, upland and extra long staple cotton, wheat, and related programs set forth in part 1413 of this title.

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(a) *Target Price Commodities* means a crop of wheat, feed grains (corn, grain sorghum, barley, and oats), upland and extra long staple (ELS) cotton, or rice.

(b) *Actual production* means the quantity of the crop actually harvested or which could have been harvested as determined by the county ASC committee in accordance with instructions issued by the Deputy Administrator, State and County Operations (Deputy Administrator) Agricultural Stabilization and Conservation Service (ASCS).

(c) *Nonprogram crop* means a crop produced on a farm for sale or exchange on a commercial basis in a large enough quantity to have a substantial impact on the producer's income, as determined by the county ASC committee in accordance with instructions issued by the Deputy Administrator, which is not a crop of a 1989 target price commodity, quota or additional peanuts, sugarcane, sugar beets, tobacco subject to marketing quotas, soybeans or sunflowers.

(d) *Disaster payment yield* means:

(1) For 1989 target price commodities with respect to farms participating and not participating in the 1989 program, the 1989 farm program payment yield determined in accordance with part 1413 of this title;

(2) For peanuts, the 1989 farm yield determined in accordance with part 729 of this title;

(3) For sugarcane, sugar beets, and all kinds of tobacco the average of the county average yield for the years 1984 through 1988 as determined by NASS, excluding the year in which the yield was the highest and the year in which the yield was the lowest;

(4) For soybeans and sunflowers, the average of the county average yield for the years 1986 through 1988 as determined by NASS, adjusted for adverse weather conditions, in accordance with instructions issued by the Deputy Administrator;

(5) For honey, the average of the county average yield per hive for the years 1984 through 1988 as determined by NASS, excluding the year in which the yield was the highest and the year in which the yield was the lowest, in accordance with instruction issued by the Deputy Adminstrator; and

(6) For nonprogram crops (including honey), the average of actual yields for the years 1986 through 1988, in accordance with instructions issued by the Deputy Administrator, if eligible producers are able to provide production evidence of actual crop yields for any of the applicable years. For any year which a producer is not able to provide adequate production evidence, the county average yield for the crop shall be substituted in determining the payment yield. Such county average yield shall be the average of the county average yields for the years 1984 through 1988 as determined by NASS, excluding the year in which the yield was the highest and the year in which the yield was the lowest.

(e) *Expected production* means:

(1) For target price commodities on farms participating in the 1989 acreage reduction programs, the disaster payment yield times the smaller of:

(i) The 1989 permitted acreage for the crop; or

(ii) The sum of the 1989 actual planted acreage and the 1989 prevented planted acreage of the crop as approved by the county committee.

(2) For target price commodities on farms not participating in the 1989 acreage reduction programs and for peanuts, sugarcane, sugar beets, soybeans, sunflowers, tobacco other than burley tobacco, and nonprogram crops, except as provided in paragraphs (e)(3) through (5) of this section, the disaster payment yield times the sum of:

(i) The 1989 planted acreage of the crop, and

(ii) The 1989 prevented planted acreage credited for disaster payment purposes not to exceed the larger of:

(A) The 1988 planted and approved prevented planted acreage of the crop minus the 1989 planted acreage of the crop, or

(B) The average of the 1986, 1987, and 1988 planted and approved prevented planted acreage of the crop minus the 1989 planted acreage of the crop.

(3) For quota kinds of tobacco other than burley and flue-cured, the expected production as determined according to paragraph (e)(2) of this section shall not exceed the result of multiplying the 1989 effective farm acre-

age allotment times the disaster payment yield.

(4) For burley tobacco, the smaller of:

(i) The 1989 effective farm marketing quota, including the effective quota resulting from a transfer of quota after June 30 under the natural disaster provisions of part 725 of this title; or

(ii) The disaster payment yield times an acreage determined by dividing the amount in paragraph (e)(4)(i) of this section by the farm yield established for the farm according to 7 CFR part 726 of this title;

(iii) The disaster payment yield times the sum of the acreage of burley tobacco:

(A) That was planted on the farm in 1989, including any approved failed acreage;

(B) For which prevented planted acreage credit is approved by the county ASC committee with respect to the 1989 crop; and

(C) Determined by dividing the quantity of any un-marketed tobacco on hand from the 1988 crop by the disaster payment yield, or

(5) For flue-cured tobacco, the smaller of:

(i) The 1989 effective farm marketing quota, including the effective quota resulting from a transfer of quota after June 30 under the natural disaster provisions of part 725 of this title; or

(ii) The sum of:

(A) The quantity determined under the provisions of paragraph (e)(2) of this section,

(B) The quantity of any un-marketed tobacco on hand from the 1988 crop, and

(C) The amount by which the farm's 1989 basic quota exceeds the 1988 basic quota.

(6) With respect to crops planted in a rotation, the most recent corresponding years in the rotation shall be substituted for the 1986, 1987, and 1988 crop for purposes of determining the prevented planted acreage credit.

(f) *Eligible disaster* means damaging weather, including but not limited to drought, hail, excessive moisture, freeze, tornado, hurricane, or excessive wind, or any combination thereof; or related condition, including but not limited to insect infestation, plant disease, or other deterioration of a crop of a commodity, including aflatoxin, that is accelerated or exacerbated naturally as a result of damaging weather occurring prior to or during harvest which occurred in 1988 or 1989 as determined by CCC.

(g) *Eligible Producer* means, with respect to a crop for which an application for disaster payment has been made under this part, a person who as owner, landlord, tenant, or sharecropper is entitled to share in such crops, or the proceeds therefrom, available for marketing from the farm or would have been if such crop had been produced.

(h) *Person* shall be defined as in 7 CFR part 1497 of this title and all rules with respect to combining persons found in that part shall be applicable. However, the determinations made in accordance with § 1497.8 shall include all entities in which an individual or entity has an interest, whether or not such entities are engaged in farming.

(i) *Repeat crop* means a subsequent crop of the same commodity planted on the same acreage as the first crop.

(j) *Double-cropped* means a subsequent crop of a different commodity planted on the same acreage as the first crop. For a crop to be considered double cropped on a farm, there must have been a history of the second crop being planted following the first crop either in:

(1) The immediately preceding year, or

(2) In three or more of the immediately preceding five years.

(k) *Replacement crop* means a subsequent crop of a different commodity planted on the same acreage after the failure or prevented planting of first crop, except for repeat crops or double-cropped crops.

(l) *Qualifying gross revenues* means:

(1) With respect to a person who receives more than 50 percent of such person's gross income from farming, ranching, and forestry operations, the annual gross income from such operations; and

(2) With respect to a person who receives 50 percent or less of such per-

son's gross income from farming, ranching, and forestry operations, the person's total gross income from all sources.

§ 1477.4 Availability of disaster payments.

(a) Disaster payments will be made available to eligible producers of 1989 target price commodities, peanuts, tobacco, sugarcane, sugar beets, soybeans, sunflowers, and nonprogram crops who suffered losses because of an eligible disaster in 1988 or 1989 in accordance with the Disaster Assistance Act of 1989.

(b) A person, as defined in § 1477.3, who has qualifying gross revenues in excess of 2.0 million dollars shall not be eligible to receive disaster benefits under this part.

(c) Eligible producers with losses of production in excess of 65 percent of expected production must agree to obtain crop insurance under the Federal Crop Insurance Act for the 1990 crop of the commodity, unless one of the following exists:

(1) Crop insurance is not available with respect to the commodity with respect to which a disaster payment is requested;

(2) The amount of the producer's annual premium rate is greater than 125 percent of the average premium rate for insurance on that commodity in the county in which the producer is located;

(3) The amount of the premium is greater than 25 percent of the amount of the disaster payment; or

(4) The county committee determines, based on an appeal by the producer, that the purchase of crop insurance would impose an undue financial hardship on the producer.

§ 1477.5 Disaster benefits.

(a) Disaster payments for prevented planting and low yield losses on 1989 crops are authorized to be made to producers who file a CCC-441, Application for 1989 Disaster Benefits, if:

(1) The farm operator submits an Application for Disaster Credit (Form ASCS-574), in accordance with instructions issued by the Deputy Administrator;

(2) The farm operator submits a report of production and disposition (Form ASCS-658) in accordance with § 1477.8; and

(3) The county committee determines that because of an eligible disaster condition, producers on a farm were:

(i) Prevented from planting an eligible commodity, or

(ii) Able to harvest less than:

(A) With respect to target price commodities on farms enrolled in the 1989 Acreage Reduction Program for such crop, 60 percent of the expected production or in the case of producers with crop insurance on such a crop, 65 percent of the expected production;

(B) With respect to target price commodities on farms not enrolled in the 1989 Acreage Reduction Program for such crop, 50 percent of the expected production;

(C) With respect to peanuts, sugar beets, sugarcane, and tobacco, 60 percent of the expected production or in the case of producers with crop insurance on such a crop, 65 percent;

(D) With respect to soybeans and sunflowers, 55 percent of the expected production; and

(E) With respect to nonprogram crops, 50 percent of the expected production.

(b)(1) The loss of production that shall be used in making a disaster payment shall be that quantity of production in excess of the following percentages of expected production on a farm that producers were unable to harvest due to a reduced yield or were prevented from planting due to an eligible disaster condition.

(i) 40 percent or 35 percent for producers with crop insurance for target price commodities with respect to farms enrolled in the 1989 Acreage Reduction Programs;

(ii) 50 percent for target price commodities with respect to farms not enrolled in the 1989 Acreage Reduction Programs;

(iii) 40 percent or 35 percent for producers with crop insurance for peanuts, sugar beets, sugarcane, and tobacco;

(iv) 45 percent for soybeans and sunflowers; and

(v) 50 percent for nonprogram crops.

(2) The loss of production for peanuts shall be prorated between quota

peanuts and additional peanuts. The loss of production of quota peanuts shall be determined by multiplying the total loss of production for peanuts times a factor determined by dividing the effective farm poundage quota, prior to any fall transfer, by the expected production for the farm. The loss of production for additional peanuts shall be determined by subtracting the loss of quota production from the total loss of production.

(3) If a peanut quota is transferred from a farm under the fall transfer provisions in part 729 of this title, the loss of production of quota peanuts determined in paragraph (b)(2) of this section shall be reduced to the extent of such quantity transferred. If the transferred quota exceeds the loss of production of quota peanuts, no further reductions are required after the loss of production of quota peanuts has been completely voided.

(4) For the purposes of determining the total quantity of nonprogram crops that producers on a farm are able to harvest, 70 percent of the following quantities shall be excluded:

(i) Commodities which the county committee determines cannot be sold in normal commercial channels of trade; and

(ii) Dockage, including husks and shells, if such dockage is excluded in determining yields in accordance with § 1477.3(d) (4)-(6), excluding soybean disaster payment yields.

(c) Disaster payment rates shall be 65 percent of:

(1) The established target price for the 1989 target price commodities for producers on farms participating in the 1989 acreage reduction programs;

(2) The basic county loan rate for the 1989 target price commodities for producers on farms not participating in the 1989 acreage reduction programs;

(3) The National price support level for quota and additional peanuts and quota kinds of tobacco;

(4) The applicable 1989 crop support price for sugar beets and sugarcane, determined by regions; and

(5) The simple average price received by producers for the marketing years for the immediately preceding five crops of the commodity, excluding the highest and lowest average prices in such period for all other eligible crops.

(d)(1) Disaster payments shall be made in an amount determined by multiplying the amount of eligible loss, as determined in paragraph (b) of this section, by the disaster payment rate, as determined in paragraph (c) of this section.

(2) With respect to eligible producers of target price commodities who are not participants in the 1989 acreage reduction programs, such computed disaster payment amount shall be reduced by an amount determined by multiplying the acreage reduction factor which was applicable for the 1989 crop of such commodities times the amount determined according to paragraph (d)(1) of this section.

(3) With respect to payments made to producers on a farm on which a replacement crop, as defined in § 1477.3, was planted after the planting and failure of a crop which would normally be harvested by such producers or the producers were prevented from planting and for which disaster benefits have been requested, the amount of the computed disaster payment shall be reduced by an amount determined by multiplying:

(i) The actual production of the second crop by;

(ii) 75 percent; by

(iii) The market value of the second crop, as determined by CCC.

(e) Producers of target price commodities participating in the 1989 acreage reduction programs shall not be required to refund advance deficiency payment made to such producers with respect to that portion of losses up to 40 percent of expected production or, in the case of producers who had crop insurance on the commodity, up to 35 percent of expected production.

(f) Effective only for the 1989 crops of wheat, feed grains, upland cotton, and rice, if CCC determines that any portion of the advance deficiency payment made to producers for the crop under part 1413 of this title must be refunded, refund shall not be required prior to July 31, 1990, for that portion of the crop for which a disaster payment is made under this part.

(g) Each eligible producer's share of a disaster payment shall be based on the eligible producer's share of the crop or the proceeds therefrom or, if no crop was produced, the share which the eligible producer would have otherwise received if the crop had been produced.

§ 1477.6 Establishment of different payment rates and yields for the same nonprogram crop.

Separate payment rates and yields for the same nonprogram crop shall be established, in accordance with instructions issued by the Deputy Administrator, when there is supporting NASS data or other sources approved by CCC available to justify establishing such rates and yields.

§ 1477.7 Filing application for payment.

(a) Applications for payment shall be filed by the applicant with the county ASCS office serving the county where the producer's farm is located for administrative purposes.

(b) An application for payment shall be filed as soon as practicable after the producer's eligibility has been established in accordance with § 1477.5(a). Applications for payment must be filed no later than April 2, 1990.

(c) Eligible producers who did not request an advance deficiency payment for the 1989 crops of wheat, feed grains, upland cotton, or rice may request such payments by making such a request in the county office by November 1, 1989.

(d) Any eligible producer who elected to devote all or a portion of a farm's permitted wheat, feed grain, upland cotton or rice acreage to conservation or other uses in accordance with part 1413 of this title may request that disaster payments be made available under this part with respect to such acreage in lieu of any payment made available under part 1413 of this title if a written request is received from the producer in the county ASCS office by November 1, 1989. Approval of prevented planting or failed acreage requests will remain the responsibility of the county ASC committee.

§ 1477.8 Report of acreage, production disposition, and indemnity payments.

(a)(1) Eligible producers shall report, in accordance with instructions issued by the Deputy Administrator, the acreage, production, and disposition of all commodities produced in 1989 on an acreage for which an application for a disaster payment is filed. Such production reports must be filed no later than April 27, 1990.

(2) If there has been a disposition of crop production through commercial channels, the eligible producer must furnish documentary evidence of such disposition in order to verify the information provided on the report. Acceptable evidence shall include, but is not limited to, such items as the original or a copy of commercial receipts, peanut and tobacco marketing cards, gin records, CCC loan documents, settlement sheets, warehouse, ledger sheets, elevator receipts or load summaries.

(3) If there has been a disposition of crop production other than through commercial channels, the eligible producer must furnish such documentary evidence as the county ASC committee determines to be necessary in order to verify the information provided by the producer.

(b) Eligible producers who have purchased crop insurance with respect to a crop for which a disaster payment is made must present evidence of the net amount of indemnity payment received (gross indemnity less premium paid) or to be received for each such crop in accordance with instructions issued by the Deputy Administrator.

§ 1477.9 Payment limitations.

(a) Disaster payments made to eligible producers shall be reduced as provided in this section. For the purpose of making such payment reductions, the term "producer" shall be considered to mean the term "person" as defined in § 1477.3. Payments for each eligible producer for each eligible commodity shall be reduced by the amount by which the sum of the disaster payment and the net amount of crop insurance indemnity payments (gross indemnity less premium) exceeds 100 percent of the expected production times the applicable basic payment rate established according to § 1477.5.

(b) No person shall receive payments attributable to lost production under this part to the extent that such person receives benefits on such lost production under the livestock emergency provisions of title VI of the Agricultural Act of 1949.

(c) No person shall receive payments under this part, when combined with any benefits received under the livestock emergency provisions of title VI of the Agricultural Act of 1949, in excess of $100,000. Persons subject to the provisions of the preceding sentence may elect the provisions under which such payments or benefits shall be received by making application for benefits under this part at the county ASCS office by April 2, 1990.

(d) For the purpose of determining the payment limitation imposed by this section, disaster payments shall be attributed to each eligible producer in accordance with § 1477.5(f). The reduction of any eligible producer's disaster payment share shall not increase the disaster payment share of any other producer.

§ 1477.10 Special provisions for burley and flue-cured tobacco, and peanuts.

(a)(1) For burley and flue-cured tobacco, the undermarketings from the 1989 crop that may be considered when determining the 1990 effective farm marketing quota shall be the 1989 actual undermarketing less the quantity of the loss of production for which a 1989 disaster payment is made for the respective kind of tobacco.

(2) If quota is leased and transferred from the farm under natural disaster provisions of parts 725 or 726 of this title, any disaster payment that was determined before such lease and transfer was approved shall be re-computed according to § 1477.5 of this part. The farm marketing quota that is in effect after such lease and transfer shall be used when re-computing the disaster payment. The amount of any overpayment that results from the re-computation shall be refunded with interest as provided in § 1477.12(b).

(b)(1) For peanuts, the undermarketings from the 1989 crop that may be claimed when determining future poundage quotas shall be the 1989 actual undermarketings less the quantity of the loss of production for which a 1989 disaster payment is made on the basis of the national support level for quota peanuts. This reduction could exceed the actual undermarketings which would result in "negative undermarketings." Any negative undermarketings shall be taken into consideration when determining the subsequent year's effective farm poundage quota.

(2) If quota is transferred from the farm under the fall transfer provisions of part 729 of this title, any disaster payment that was determined before such transfer was approved shall be re-computed according to the provisions in § 1477.5 of this part. The amount of any overpayment that results from the re-computation shall be refunded with interest as provided in § 1477.12(b) of this part.

§ 1477.11 Misrepresentation, scheme and device, and fraud.

(a) If CCC determines that any producer has erroneously represented any fact or has adopted, participated in, or benefited from, any scheme or device which has the effect of defeating, or is designed to defeat the purpose of this part, such producer shall not be eligible for disaster payments under this part and all payments previously made to any such producer shall be refunded to CCC. The amount to be refunded to CCC shall include any interest and other amount determined in accordance with this part.

(b) If any misrepresentation, scheme or device, or practice has been employed for the purpose of causing CCC to make a payment which CCC under this part otherwise would not make, all amounts paid by CCC to any such producer shall be refunded to CCC together with interest and other amounts as determined in accordance with this part, and no further disaster payments shall be made to such producer by CCC.

(c) If the county ASC committee determines that any producer has adopted or participated in any practice which tends to defeat the purpose of the program established in accordance with this part, the county committee shall withhold or require to be refunded all or part of the payments which otherwise would be due the producer under this part.

§ 1477.12 Refunds to CCC.

(a) In the event that there is a failure to comply with any term, requirement, or condition for payment made in accordance with this part, all such payments made to the producer shall be refunded to CCC, together with interest.

(b) Interest shall be charged with respect to any refund which is determined to be due CCC at the rate of interest which CCC is required to pay for its borrowings from the United States Treasury as of the date of the disbursement by CCC of the moneys to be refunded. Interest shall accrue from the date of such disbursement by CCC. Upon the sending of the notification of the debt by CCC to the producer, the account shall bear late payment charges to be assessed in accordance with the provisions of, and subject to the rates prescribed in, part 1403 of this title. If, for any reason, no late payment charges may be assessed with respect to such account under the provisions of part 1403 of this title, additional charges on the account will accrue at the rate equal to the current rate for CCC borrowings from the United States Treasury plus three percent per annum.

(c) Producers must refund to CCC any excess payments made by CCC.

(d) In the event that the loss of production was established as a result of erroneous information provided by any person to the county ASCS office or was erroneously computed by such office, the loss of production shall be re-computed and the payment due shall be corrected as necessary. Any refund of payments which are determined to be required as a result of such re-computation shall be remitted to CCC.

§ 1477.13 Cumulative liability.

The liability of any producer for any payment or refund which is determined in accordance with this part to be due to CCC shall be in addition to any other liability of such producer under any civil or criminal fraud statute or any other statute or provisions of law including, but not limited to, 18 U.S.C. 286, 287, 371, 641, 1001; 15 U.S.C. 714m; and 31 U.S.C. 3729.

§ 1477.14 Appeals.

Reconsideration and review of all determinations made in accordance with this part with respect to a farm or an individual producer shall be made in accordance with part 780 of this title.

§ 1477.15 Liens.

Any payment which is due any person shall be made without regard to questions of title under State law and without regard to any claim or lien against the crop, and the proceeds thereof, which may be asserted by any creditor, except agencies of the United States Government.

§ 1477.16 Other regulations.

The following regulations and amendments thereto shall also be applicable to this part:

(a) 7 CFR part 12, Highly Erodible Land and Wetland Conservation.

(b) 7 CFR part 13, Setoffs and Withholdings.

(c) 7 CFR part 707, Payments Due Persons Who Have Died, Disappeared or Have Been Declared Incompetent.

(d) 7 CFR part 719, Reconstitution of Farms, Allotments, Normal Crop Acreage and Preceding Year Planted Acreage.

(e) 7 CFR part 724, Fire-cured, dark air-cured, Virginia sun-cured, cigar-binder (types 51 and 52), cigar-filler and binder (types 42, 43, 44, 53, 54, and 55) tobacco.

(f) 7 CFR part 725, Flue-cured tobacco.

(g) 7 CFR part 726, Burley tobacco.

(h) 7 CFR part 729, Peanuts.

(i) 7 CFR part 780, Appeal Regulations;

(j) 7 CFR part 790, Incomplete Performance Based Upon Action or Advice of an Authorized Representative of the Secretary;

(k) 7 CFR part 796, Denial of Program Eligibility for Controlled Substance Violation;

(l) 7 CFR part 1403, Interest on Delinquent Debts;

(m) 7 CFR part 1413, Feed grain, Rice, Upland and Extra Long Staple Cotton, and Wheat;

(n) 7 CFR part 1470, Commodity Certificates, In-Kind Payments, and Other Forms of Payments; and

(o) 7 CFR part 1497, Payment Limitation.

§ 1477.17 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

The information collection requirements of this part shall be submitted to the Office of Management and Budget (OMB) for purposes of the Paperwork Reduction Act and it is anticipated that an OMB Number will be assigned.

PART 1478—1989 TREE ASSISTANCE PROGRAM

Sec.

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1478.17 1989 Losses due to earthquake or related condition.

AUTHORITY: 15 U.S.C. 714b and 714c, 7 U.S.C. 1421 *note*.

SOURCE: 54 FR 47670, Nov. 16, 1989, unless otherwise noted.

§ 1478.1 General statement.

(a) The regulations in this part set forth the terms and conditions of the 1989 Tree Assistance Program (1989 TAP) authorized by title I of the Disaster Assistance Act of 1989 (the Act). Within specified limits, the Commodity Credit Corporation (CCC) is authorized by the Act to:

(1) Reimburse eligible persons for part of the cost of replanting seedlings to offset losses by an eligible orchardist for trees that were planted in any year to produce annual crops for commercial purposes but were lost due to freeze or related condition, or earthquake or related condition, in 1989; and,

(2) Reimburse eligible persons for part of the cost of replanting seedlings planted in 1988 or 1989 that were planted to produce trees to be harvested for commercial purposes where the seedlings were lost due to drought or related condition, or earthquake or related condition, in 1989.

(b) Such assistance may not exceed 65 percent of the eligible reseeding costs actually incurred by the producer with respect to those eligible losses which, after adjustments for normal mortality, exceed a percentage loss of 45 percent, as determined by CCC.

(c) Assistance for 1989 losses due to earthquake or related condition may be made available as provided for in § 1478.17.

[55 FR 19054, May 8, 1990]

§ 1478.2 Administration.

(a) This part shall be administered by CCC under the general direction and supervision of the Executive Vice President, CCC. The program shall be carried out in the field by State and county Agricultural Stabilization and Conservation (ASC) committees (State and county committees).

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations in this part, as amended or supplemented.

(c) The State committee shall take any action required by this part which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, any action taken by such county committee which is not in accordance with this part; or

(2) Require a county committee to withhold taking any action which is not in accordance with this part.

(d) No delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

§ 1478.3 Definitions.

(a) In determining the meaning of the provisions of this part, unless the context indicates otherwise, words importing the singular include and apply to several persons and things, words importing the plural include the singular, words importing the masculine gender include the feminine, and words used in the present tense include the future as well as the present.

(b) The following terms contained in this part shall have the following meanings:

"*Annual gross revenue*" means with respect to a person, as defined in Part 1497 of this title:

(i) For a person who receives more than 50 percent of such person's gross income from farming, ranching, and forestry operations, the total gross income received from such operations; and,

(ii) Receives 50 percent or less of such person's gross income from farming, ranching, and forestry operations, the total gross income from all sources.

However, the determinations made in accordance with § 1497.8 of this chapter shall include all entities in which an individual or entity has an interest, whether or not such entities are engaged in farming.

"*Approving official*" means a representative of CCC who is authorized by the Executive Vice President, CCC, to approve an application for assistance made in accordance with this part.

"*ASCS*" means the Agricultural Stabilization and Conservation Service.

"*CCC*" means the Commodity Credit Corporation.

"*County*" means a county or similar geographic area as determined by CCC.

"*DASCO*" means the Deputy Administrator, or Acting Deputy Administrator, State and County Operations, ASCS, U.S. Department of Agriculture.

"*Eligible owner*" means an individual, partnership, corporation, association, estate, trust, or other business enterprise or legal entity and includes:

(i) Any Indian tribe under the Indian Self-Determination and Education Assistance Act;

(ii) Any Indian organization or entity chartered under the Indian Reorganization Act;

(iii) Any tribal organization under the Indian Self-Determination and Assistance Act; and,

(iv) Any economic enterprise under the Indian Financing Act of 1974 which meets the requirements of this part.

Federal, State and local governments and agencies and political subdivisions thereof are specifically excluded. In addition, in determining whether an individual or other entity is an eligible owner, such person, as determined under part 1497 of this chapter, must with respect to a request for relief for losses due to freeze or related condition in 1989, not own more than 500 acres of trees which produce annual crops for commercial purposes and with respect to a request for relief for losses due to drought or related condition in 1989, not own more than 1,000 acres of trees produced for harvest for commercial purposes. Also, in order to be eligible for payments under this part a person, as defined under Part 1497 of this chapter, must not also have annual gross revenue in excess of $2 million, as determined under this part.

"*Eligible trees*" or "*eligible seedlings*" means trees or seedlings as appropriate, which are determined by CCC to have been planted for:

(i) The production of wood products, fruit, nuts, syrup, or similar products, or,

(ii) Harvest as Christmas trees.

Such trees or seedlings must be planted in the ground and may not be trees or seedlings planted in containers, or in other devices which are not placed in the ground, trees or seedlings grown from seed at the site, trees or seedlings produced for resale in a live condition, ornamental trees or seedlings, bushes, shrubs, vines and similar plants, and windbreaks, shelterbelts and wildlife enhancement plantings. In addition, if the request for assistance is for losses from a freeze or related condition, the eligible trees must also be trees that have been planted for commercial purposes to produce annual crops; and, if the request for relief is for losses due to drought or related condition, the plants must be tree seedlings planted in 1988 or 1989 for harvest for commercial purposes.

"Executive Vice President" means the Executive Vice President, CCC, or a designee of the Executive Vice President.

"Harvest" means the removal of the tree from the ground by the cutting and removal of the whole tree at its base in a manner which separates the tree from its root system.

"Individual stand" means an area of eligible trees which are tended to by an eligible owner as a single operation, whether or not such trees are planted in the same field or similar location, as determined by CCC. Differing species of trees in the same field or similar area may be considered to be separate individual stands if CCC determines that the species have significantly differing levels of drought susceptibility.

"Local county office" means with respect to individual stands of eligible trees which are grown on a farm:

(i) Which has been assigned an ASCS farm serial number, the county ASCS office which services such farm; or

(ii) which has not been assigned an ASCS farm serial number, the county ASCS office which services the county in which such stand is located.

"Normal mortality" with respect to a request for relief for drought or related condition, means the average extent of plant death on the individual stand which normally would have occurred with respect to eligible seedlings during the period between the time of planting and the time of the loss with respect to which assistance is requested under this part without regard to any detrimental conditions which do not regularly effect seedling or tree survival rates in the local area, as determined by the County ASC committee in accordance with instructions of DASCO.

"Operator" means a person who is in general control of the tree farming operations as determined by CCC.

"Seedling" means a tree which was planted in the ground for commercial purposes and is of a size which CCC determines is:

(i) Normally planted in the ground and;

(ii) Does not exceed the size which is normally considered seedling size for the particular species of an eligible tree.

"State" means any State of the United States, the Commonwealth of Puerto Rico, the Virgin Islands, or Guam.

"State committee", *"State office"*, *"county committee"*, or *"county office"*, means the respective ASC committee or ASCS office.

(c) In the regulations in this part and in all instructions, terms, and documents in connection therewith, all other words and phrases specifically relating to ASCS operations shall, unless the context of the subject matter otherwise requires, have the meanings assigned to them in the regulations governing reconstitution of farms, allotments, and bases in part 719 of this title.

§ 1478.4 Program availability.

A request by an eligible owner for assistance under this part must be made on or before June 30, 1990. Eligible owners shall not receive assistance under this part with respect to losses of seedlings which were:

(a) Planted under the Conservation Reserve Program; or

(b) The subject of any cost-share assistance or other assistance under any other Federal program, unless approved in writing by DASCO.

§ 1478.5 Qualifying loss.

(a) A person shall be eligible to receive assistance under this part with respect to losses due to freeze or related condition in 1989 or drought or related condition in 1989 only if such owner is an eligible owner, as defined in this part and has sustained a qualifying loss of eligible tree seedlings or trees as determined by CCC. The only type of losses which may be considered qualifying are the following:

(1) A loss by an eligible owner who is an orchardist who is the owner of eligible trees planted in any year for commercial purposes which are lost as a result of a freeze or related condition in 1989 as determined by the county ASC committee in accordance with instructions of DASCO or

(2) A loss by an eligible tree farmer who grows trees for harvest for commercial purposes and is the owner of eligible tree seedlings planted for such commercial purposes in 1988 or 1989 which were lost as a result of drought or related condition in 1989 as determined by the county ASC committee in accordance with instructions of DASCO.

Qualifying loss determinations shall be made on an individual stand basis.

(b) A qualifying loss shall be the loss for the individual stand of eligible tree seedlings or eligible trees, as appropriate, after taking into account the normal mortality of such seedlings, trees, or seedlings and trees as appropriate, on such stand, in excess of 45 percent mortality (adjusted for normal mortality). Qualifying losses shall not include losses which could have been prevented through readily-available horticultural measures.

§ 1478.6 Eligible costs.

(a) Payments under this part shall be made by CCC and may be made only to the extent that payment is specifically provided for in this part. CCC shall, under this part, to the extent of the availability of funds, reimburse an eligible owner for 65 percent of the eligible costs of planting seedlings, not in excess of the number of seedlings or trees constituting the qualifying loss, to the extent that CCC determines that such costs are reasonable, and are to replace the number of trees or seedlings constituting the qualifying loss. If the costs are to replace lost seedlings, such costs for replacement seedlings shall be limited by the cost needed to plant seedlings that are as similar as possible in size and value to those originally planted and subsequently destroyed. If the costs are to replace lost trees, the costs shall only be for replacement seedlings of a size and quality determined by CCC to be sufficient for that purpose. The costs for which cost-sharing shall be permitted shall be only the costs which are the cost of the seedlings, site preparation measures that are both normal cultural practices for the type of individual stand being reestablished and necessary to ensure successful plant survival, chemicals and nutrients if needed to ensure successful plant survival, and labor used to physically plant such seedlings as based on standard labor rates as determined by the county committee. Eligible costs specifically exclude items such as fencing, irrigation, irrigation equipment, measures to protect seedlings from wildlife, and general land and tree stand improvements. Eligible costs shall not include those costs incurred prior to filing an application for participation in the program, unless specifically otherwise approved by DASCO.

(b) Eligible costs shall not include costs incurred for replanting species of seedlings differing significantly from the species of the seedlings or trees constituting the qualifying loss except as approved by CCC. If such substitution is approved, eligible costs shall be the lesser of:

(1) The actual eligible costs incurred; or

(2) The estimated eligible costs which otherwise would have been incurred.

(c) Eligible costs shall only include costs approved within the limits set by this part including, but not limited to, those limits set forth in paragraphs (a) and (f) of this section, which have been actually incurred by the eligible owner and for which the eligible owner has presented adequate documentation. Further, except as otherwise authorized by DASCO, eligible costs shall not include costs for a practice or activity which has not been completed.

(d) The amount of assistance which shall be paid by CCC, shall not exceed 65 percent of the eligible costs actually incurred by an eligible applicant from replanting the qualifying loss as determined by CCC.

(e) Notwithstanding any other provision of this part, an application for payment shall not be approved by the county committee without the written approval of the State committee if such payment would exceed:

(1) For timber and wood seedlings, $.25 per seedling;

(2) For Christmas tree seedlings, $.50 per seedling;

(3) For other seedlings, $5.00 per seedling; or

(4) An amount, determined on a per acre individual stand basis taking into account the amount of the eligible tree seedling loss, which is greater than:

(i) For land planted to timber and wood seedlings, 75 percent of the average county dryland cropland value.

(ii) For Christmas tree seedlings, 100 percent of the average county dryland cropland value; and

(iii) For all other seedlings, 250 percent of the average county dryland cropland value.

(f) The State committee may not, without the written approval of DASCO, approve an application for payment, if such payment would exceed 150 percent of the amounts specified in paragraph (e) of this section.

§ 1478.7 Payment.

(a) Applications for payment shall be filed by the eligible owner with the local ASCS office and shall certify and set forth accurately the number of seedlings or trees which constitute the qualifying loss and the amount of the acreage of the individual stands with respect to which the loss was suffered.

(b)(1) The county committee or designee shall review each application. The county committee and, if designated by the county committee, the county executive director, is authorized, subject to the provisions of this part, to approve or disapprove all applications, subject to the limitations and conditions of this part, provided the applicant is not a county committee member or an ASCS employee.

(2) The State committee, or a designee, is authorized to approve or disapprove applications of the county committee members and all ASCS employees except an application which may be submitted by the State Executive Director, or by a State Committee member.

(3) DASCO, or a designee, shall approve or disapprove applications of State committee members and the State Executive Director.

(4) All applications forwarded to a higher authority for consideration shall be accompanied by committee recommendations. No application shall be approved unless the owner meets all eligibility requirements. Information furnished by the applicant and any other information, including knowledge of the county and State committee members concerning the owner's normal operations, shall be taken into consideration in making recommendations and approvals. If information furnished by the owner is incomplete or ambiguous and sufficient information is not otherwise available with respect to the owner's farming operations in order to make a determination as to the owner's eligibility, the owner's application shall not be approved until sufficient additional information is provided by the owner.

(5) An applicant shall be notified in writing of the action taken with respect to an application by the appropriate official.

§ 1478.8 Obligations of an eligible owner.

(a) Eligible owners must submit a request for assistance on a form approved by CCC and must also submit all documentation requested by the appropriate official which is necessary to make determinations specified in this part.

(b) Eligible owners must:

(1) Comply with all terms and conditions of this part;

(2) Execute all required documents; and

(3) Comply with all applicable noxious weed laws.

(c) In the event of a determination by CCC that a person was erroneously determined to be eligible or has become ineligible for all or part of a payment made under this part for any reason, including a failure to comply with the terms and conditions of this part, or other condition for payment imposed by the county ASC committee, or DASCO, such person shall refund any payment paid under this part together with interest. Such interest shall be charged at the rate determined for late payment charges under part 1403 of this chapter and computed from the date of disbursement by CCC of the payment to the date of the refund.

§ 1478.9 Payment limitations.

(a) The amount of payments which any person, as determined in accordance with part 1497 of this chapter, may receive under this part in connection with losses in 1989 due to freeze or related condition shall not exceed $25,000.

(b) The amount of payments which any person, as determined in accordance with part 1497 of this chapter, may receive under this part in connection with losses in 1989 due to drought or related condition shall not exceed $25,000.

§ 1478.10 Liens and claims of creditors; set-offs.

Any payment or portion thereof due any person under this part shall be allowed without regard to questions of title under State law, and without regard to any claim or lien in favor of any person except agencies of the U.S. Government. The regulations governing set-offs and withholdings found at part 13 of this title shall be applicable to this part.

§ 1478.11 Appeals.

Any person who is dissatisfied with a determination made with respect to this part may make a request for reconsideration or appeal of such determination in accordance with the appeal regulations set forth at part 780 of this title.

§ 1478.12 Misrepresentation and scheme or device.

A person who is determined by the State committee or the county committee to have:

(a) Adopted any scheme or other device which tends to defeat the purpose of this program; (b) made any fraudulent representation; or (c) misrepresented any fact affecting a program determination shall be ineligible to receive assistance under this program.

In either case all moneys paid by CCC under this part to any such person or to any other person as a result of such person's actions shall be refunded to CCC with interest together with such other sums as may become due. The party engaged in acts prohibited by this section and the party receiving payment shall be jointly and severably liable for any refund due under this section and for related charges. The remedies provided to CCC in this part shall be in addition to other civil, criminal, or administrative remedies as will apply.

§ 1478.13 Estates, trusts, and minors.

(a) Program documents executed by persons legally authorized to represent estates or trusts will be accepted only if such person furnishes evidence of the authority to execute such documents.

(b) A minor who is an otherwise eligible owner shall be eligible for assistance under this subpart only if such person meets one of the following requirements:

(1) The minor establishes the right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and the applicable program documents are executed by the guardian; or

(3) A bond is furnished under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

§ 1478.14 Death, incompetency, or disappearance.

In the case of death, incompetency of disappearance, of any owner who is eligible to receive assistance in accordance with this part, such person or persons specified in part 707 of this title may receive such assistance.

§ 1478.15 Other regulations.

In addition to any other regulations as may be applicable, the following regulations shall also apply to this part:

(a) Part 12 of this title, Highly Erodible Land and Wetland Conservation;

(b) Part 790 of this title, Incomplete Performance Based Upon Action or Advice of an Authorized Representative of the Secretary;

(c) Part 791 of this title, Authority to Make Payments When There Has Been a Failure to Comply with the Program;

(d) Part 796 of this title, Denial of Program Eligibility for Controlled Substance Violations;

(e) Part 1403 of this chapter, Interest on Delinquent Debt.

§ 1478.16 Paperwork Reduction Act assigned numbers.

The information collection requirements of this part have been submitted to the Office of Management and Budget (OMB) for purposes of the Paperwork Reduction Act and the OMB Number 0560-0079 has been assigned.

§ 1478.17 1989 Losses due to earthquake or related condition.

(a) Notwithstanding any other provision of this part, assistance may be made available as provided for in paragraph (b) of this section for 1989 losses due to earthquake or related condition.

(b)(1) Persons who meet both the following criteria:

(i) Produce annual crops from trees for commercial purposes; and

(ii) Own less than 500 acres of such trees, may receive assistance for 1989 losses of such trees for losses due to earthquake or related condition under the same terms, conditions and limitations (including, but not restricted to, limitations on payment) that apply under this part for assistance for 1989 losses due to freeze or related condition. The amount that may be received under paragraph (b)(1) of this section, when combined with the assistance for 1989 freeze losses under this part may not exceed the amount of $25,000 per person as determined under this part.

(2) Persons who meet both of the following conditions:

(i) Grow trees for harvest for commercial purposes; and

(ii) Own 1,000 acres or less of such trees, who planted seedlings for such purposes in 1988 or 1989 but lost such seedlings due to an earthquake or related condition in 1989 may receive assistance under the same terms, conditions and limitations (including, but not limited to, limitations on payment) that apply under this part for assistance for 1989 losses due to drought or related condition. The amount that may be received under paragraph (b)(2) of this section, when combined with the assistance for 1989 drought losses under this part may not exceed the amount of $25,000 per person as determined under this part.

[55 FR 19054, May 8, 1990]

PART 1479—FORAGE ASSISTANCE PROGRAM

Sec.

1479.1 General statement.
1479.2 Administration.
1479.3 Definitions.
1479.4 Funding.
1479.5 Eligible established pasture.
1479.6 Eligible costs.
1479.7 Eligible person.
1479.8 Application for FAP Agreement.
1479.9 FAP Agreement.
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1479.11 Payment limitation.
1479.12 Liens and claims of creditors; setoffs.
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1479.15 Estates, trusts, and minors.
1479.16 Death, incompetency, or disappearance.
1479.17 Other regulations.
1479.18 Paperwork Reduction Act assigned numbers.

AUTHORITY: Secs. 4 and 5 of the Commodity Credit Corporation Charter Act, as amended, 62 Stat. 1070, as amended, 1072 (15 U.S.C. 714b and 714c); sec. 103 of the Disaster Assistance Act of 1988, 102 Stat. 932 (7 U.S.C. 1471d *note*).

SOURCE: 53 FR 41309, Oct. 21, 1988, and 54 FR 965, Jan. 11, 1989, unless otherwise noted.

§ 1479.1 General statement.

The regulations in this part set forth the terms and conditions of the Forage Assistance Program (FAP) authorized by section 103 of the Disaster Assistance Act of 1988. Within specified limits, CCC is authorized to pay eligible persons 50 percent of the cost of reseeding established pasture damaged in 1988 due to 1988 drought or related conditions.

§ 1479.2 Administration.

(a) This part shall be administered by CCC under the general direction and supervision of the Executive Vice President, CCC. The program shall be carried out in the field by State and County Agricultural Stabilization and Conservation (ASC) committees (State and county committees).

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations in this part, as amended or supplemented.

(c) The State committee shall take any action required by this part which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, any action taken by such county committee which is not in accordance with this part; or

(2) Require a county committee to withhold taking any action which is not in accordance with this part.

(d) No delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

§ 1479.3 Definitions.

(a) In determining the meaning of the provisions of this part, unless the context indicates otherwise, words importing the singular include and apply to several persons and things, words importing the plural include the singular, words importing the masculine gender include the feminine, and words used in the present tense include the future as well as the present.

(b) The following terms contained in this part shall have the following meanings:

"*Approving Official*" means a representative of CCC who is authorized by the Executive Vice President, CCC, to approve an application for assistance made in accordance with this part.

"*ASCS*" means the Agricultural Stabilization and Conservation Service.

"*CCC*" means the Commodity Credit Corporation.

"*County*" means a county or similar geographic area as determined by CCC.

"*DASCO*" means Deputy Administrator or Acting Deputy Administrator, State and County Operations, ASCS, U.S. Department of Agriculture.

"*Established pasture*" means land in permanent vegetative cover used exclusively for grazing by livestock.

"*Executive Vice President*" means the Executive Vice President of the Commodity Credit Corporation.

"*FAP Agreement*" means the cost-share agreement entered into by an eligible person and CCC pursuant to the provisions of this part.

"*Forage crop*" means a nonannual crop which is used for livestock for grazing.

"*Local ASCS Office*" means with respect to:

(1) Individual pastures on a farm which has been assigned as ASCS farm serial number, the county ASCS office which serves such farm; or

(2) All other pastures, the county ASCS office which serves the county in which the pasture is located.

"*Operator*" means a person who is in general control of the farming operations on the farm as determined by CCC.

"*Secretary*" means the Secretary of Agriculture.

"*State*" means any State of the United States, the Commonwealth of Puerto Rico, the Virgin Islands, or Guam.

"*State committee*", "*State office*", "*county committee*", or "*county office*" means the respective ASC committee or ASCS office.

(c) In the regulations in this part and in all instructions, terms, and documents in connection therewith, all other words and phrases specifically relating to ASCS operations shall, unless the context of the subject matter otherwise requires, have the meanings assigned to them in the regulations governing reconstitution of farms, allotments, and bases in 7 CFR Part 719.

§ 1479.4 Funding.

No more than $50 million of CCC funds may be expended for the program. FAP assistance for which persons are otherwise eligible under this part may be adjusted, prorated, or reduced as the Executive Vice President deems appropriate to facilitate the equitable proration of funds for this purpose.

§ 1479.5 Eligible established pasture.

FAP cost-share assistance shall be available only for reseeding eligible established pasture. Such pasture shall be only established pasture which has been damaged in 1988 due to the 1988 drought or related 1988 conditions.

§ 1479.6 Eligible costs.

(a) FAP payments shall only be made with respect to 50 percent of costs incurred by an eligible person only for the cost of replanting a forage crop on the eligible established pasture. Such costs shall include only the cost of the seeds, planting, seedbed preparation, and nutrients needed to ensure successful plant survival, and labor, as based on standard labor rates as determined by the county committee, used to physically plant such seeds. Eligible costs specifically exclude items such as fencing, pesticides, irrigation, irrigation equipment, measures to protect seedings from wildlife, and general land and pasture improvements.

(b) Eligible costs shall not include costs incurred for replanting a forage crop differing significantly from the forage crop constituting the qualifying loss, except as determined by CCC. If such substitution is approved, eligible costs shall, unless approved in written instructions issued by DASCO, be the lessor of:

(1) The actual costs incurred for the substituted forage crop; or

(2) The estimated costs which would have been incurred for the original forage crop.

(c) Eligible costs shall only include reasonable costs which have been incurred for which the eligible person has presented adequate documentation and, except as otherwise authorized by DASCO, shall not include costs for a practice or activity which has not been completed.

(d) The amount of payments which shall be made by CCC, subject to the availability of funds, shall not exceed 50 percent of the eligible costs as determined by CCC.

(e)(1) Notwithstanding the provisions of paragraph (b) of this section, an application for payment shall not be approved by the county committee without the written approval of the State committee if such payment would exceed $100.00 per acre for the reseeded acres constituting the qualifying loss.

(2) The State committee may not, without the written approval of DASCO approve an application for payment if such payment would exceed $150.00 per acre.

(f) FAP assistance may only be provided to eligible persons when:

(1) The forage crop will not regenerate naturally;

(2) Reseeding in the most cost-effective method to reestablish such crop; and

(3) Reseeding is not undertaken simply to improve the forage crop damaged by the drought.

(g) FAP cost-share assistance shall be available only if the request by an eligible person for assistance under this part is filed by May 15, 1989.

(h) All activities for which FAP assistance is requested shall be completed by the date specified in the FAP agreement.

[53 FR 41309, Oct. 21, 1988, and amended at 54 FR 965, Jan. 11, 1989]

§ 1479.7 Eligible person.

(a) A person shall be eligible for FAP assistance only if the person is an owner or operator of eligible established pasture.

(b) A person is an eligible person for FAP assistance only to the extent of eligible costs incurred by such person. A person shall be considered an eligible person only for a FAP payment up to the net costs incurred by that person exclusive of any payment or reimbursement to that person or that person's account for such costs; provided further that if the applicant is the operator of the property such operator shall not be deemed to have incurred costs for reseeding to the extent that such operator has been, or is, reimbursed or paid by the owner of the land, directly or indirectly, for such costs.

(c)(1) An eligible person may be an individual, partnership, corporation, association, estate, trust, or other business enterprise or legal entity, including:

(i) Any Indian tribe under the Indian Self-Determination and Education Assistance Act;

(ii) Any Indian organization or entity chartered under the Indian Reorganization Act;

(iii) Any tribal organization under the Indian Self-Determination and Education Assistance Act; and,

(iv) Any economic enterprise under the Indian Financing Act of 1974 that meets the requirements of this part. Federal, State and local governments and agencies and political subdivisions thereof are specifically excluded.

(2) Federal, State and local governments and agencies and political subdivisions thereof, shall not be considered to be eligible persons for purposes of this part.

[53 FR 41309, Oct. 21, 1988, and amended at 54 FR 965, Jan. 11, 1989]

§ 1479.8 Application for FAP Agreement.

(a) Application for a FAP agreement shall be filed by the eligible owner or operator on a form approved by CCC with the local ASCS office.

(b)(1) The county committee or designee shall review each application. The county committee and, if designated by the county committee, the county executive director, is authorized to approve or disapprove all applications provided the applicant is not a county committee member or an ASCS employee.

(2) The State committee, or a designee, is authorized to approve or disapprove applications of the county committee members and all ASCS employees except an application which may be submitted by the State Executive Director.

(3) DASCO, or a designee, shall approve or disapprove applications of State committee members and the State Executive Director.

(4) All applications forwarded to a higher authority for consideration shall be accompanied by committee recommendations. No application shall be approved unless the applicant meets all eligibility requirements. Information furnished by the applicant and any other information, including knowledge of the county and State committee members concerning the applicant's normal operations, shall be taken into consideration in making recommendations and approvals. If information furnished by the applicant is incomplete or ambiguous and sufficient information is not otherwise available with respect to the applicant's farming operations in order to make a determination as to the applicant's eligibility, the application shall not be approved until sufficient additional information is provided by the applicant.

(5) An applicant shall be notified in writing of the action taken by the approving official with respect to the application.

[53 FR 41309, Oct. 21, 1988, and amended at 54 FR 965, Jan. 11, 1989]

§ 1479.9 FAP Agreement.

The FAP agreement shall set forth the reseeding requirements, incuding the period for which the reseeded forage crop must be maintained, seeding rates, eligible seed, fertilizer, and the amount of the eligible established pasture to be reseeded. The requirements for reseeding in the FAP agreement shall be in accord with county FAP reseeding standards developed by the county committee.

§ 1479.10 Obligations of person entering into FAP Agreement.

(a) A person entering into a FAP agreement must:

(1) Submit all documentation requested by the approving official which is necessary to make all determinations specified in this part;

(2) Comply with all terms and conditions of such agreement and of this part;

(3) Execute all required documents; and

(4) Comply with all applicable noxious weed laws.

(b) In the event of a determination by CCC that a person was erroneously determined to be eligible or has become ineligible for all or part of a payment made under this part for any reason, including a failure to comply with the terms and conditions of this part, such person shall refund any payment paid under this part together with interest. Such interest shall be charged at the rate determined for late payment charges under 7 CFR Part 1403 and computed from the date of disbursement by CCC of the payment to be refunded to the date of the refund.

§ 1479.11 Payment limitation.

No person, as determined under Part 795 of this title, shall receive more than $3,500 of payments under this part.

§ 1479.12 Liens and claims of creditors; setoffs.

Any payment or portion thereof due any person under this part shall be allowed without regard to questions of title under State law, and without regard to any claim or lien in favor of any person except agencies of the U.S. Government. The regulations governing set-offs and withholdings found at Part 13 of this title shall be applicable to this part.

§ 1479.13 Appeals.

Any person who is dissatisfied with a determination made with respect to this part may make a request for reconsideration or appeal of such determination in accordance with the appeal regulations set forth at Part 780 of this chapter.

§ 1479.14 Misrepresentation and Scheme or Device.

A person who is determined by the State committee or the county committee to have:

(a) Adopted any scheme or other device which tends to defeat the purpose of this program;

(b) Made any fraudulent representation; or

(c) Misrepresented any fact affecting a program determination shall be ineligible to receive assistance under this program.

§ 1479.15 Estates, trusts, and minors.

(a) Program documents executed by persons legally authorized to represent estates or trusts will be accepted only if such person furnishes evidence of their authority to execute such documents.

(b) A minor who is an eligible person shall be eligible for assistance under this subpart only if such person meets one of the following requirements:

(1) The right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and the applicable program documents are executed by the guardian; or

(3) A bond is furnished under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

§ 1479.16 Death, incompetency, or disappearance.

In the case of death, incompetency or disappearance, of any owner who is eligible to receive assistance in accordance with this part, such person or persons specified in Part 707 of this title may receive such assistance.

§ 1479.17 Other regulations.

The following regulations shall also apply to this part unless otherwise specified in those regulations:

(a) Part 12, Highly Erodible Land and Wetland Conservation;

(b) Part 790, Incomplete Performance Based Upon Action or Advice of an Authorized Representative of the Secretary;

(c) Part 791, Authority to Make Payments When There Has Been a Failure To Comply With the Program;

(d) Part 796, Denial of Program Eligibility for Controlled Substance Violations;

(e) Part 1403, Interest on Delinquent Debt; and

(f) All other parts of the Code of Federal Regulations which are applicable to 7 CFR Part 1479.

§ 1479.18 Paperwork Reduction Act assigned numbers.

The information collection requirements of this part shall be submitted to the Office of Management a Budget (OMB) for purposes of the P perwork Reduction Act and it is anti pated that an OMB Number will be a signed.

SUBCHAPTER C—EXPORT PROGRAMS

PART 1485—COOPERATIVE AGREEMENTS FOR THE DEVELOPMENT OF FOREIGN MARKETS FOR AGRICULTURAL COMMODITIES

Sec.

1485.1 Purpose and scope.
1485.2 Definitions.
1485.3 Targeted Export Assistance Program Agreements.
1485.4 Targeted Export Assistance/Export Incentive Program Agreements.
1485.5 Program participation and benefits.
1485.6 Compliance with program requirements.
1485.7 Paperwork Reduction Act assigned number.

AUTHORITY: Sec. 5(f) of the Commodity Credit Corporation Charter Act (15 U.S.C. 714c(f)).

SOURCE: 54 FR 37783, Sept. 13, 1989, unless otherwise noted.

§ 1485.1 Purpose and scope.

This part sets forth policies and requirements with respect to the conduct by the Commodity Credit Corporation of the Targeted Export Assistance (TEA) program conducted pursuant to section 1124 of the Food Security Act of 1985. In addition, §§ 1485.2, 1485.5 and 1485.6 apply to any other agreement with the Commodity Credit Corporation that specifically incorporates the provisions of such sections.

§ 1485.2 Definitions.

(a) *Agricultural commodities* includes agricultural commodities and products thereof.

(b) *Affiliate or affiliated organization* means any partnership, association, company, corporation, trust, or any other legal entity in which the program participant has any investment other than an investment in any mutual fund.

(c) *CCC* means the Commodity Credit Corporation.

(d) *Participant and program participant* shall be deemed to mean any entity entering into an agreement within the scope of this part 1485.

(e) *Sales teams* are teams engaged in activities intended to result in specific sales by team members.

(f) *Trade teams* are teams engaged in activities to promote the interests of the entire agricultural sector represented by the program participant.

§ 1485.3 Targeted Export Assistance Program Agreements.

(a) *Purpose.* Agreements entered into under this section will be for the purpose of countering or offsetting the adverse effect on exports of agricultural commodities of a subsidy, import quota or other foreign unfair trade practices of a foreign country, with first consideration given to commodities with respect to which there has been a favorable decision under section 301 of the Trade Act of 1974 or for which exports have been adversely affected by retaliatory actions related to a favorable decision under section 301 of the Trade Act of 1974.

(b) *Eligible Organizations.* Organizations selected shall represent the commodity being assisted on the broadest possible basis, with priority given to those which are industry-wide and nation-wide in membership and scope. Participants must demonstrate an ability to provide a U.S.-based staff capable of developing, supervising and carrying out market development projects overseas, and be willing and able to contribute resources to a joint project.

(c) *Use of Third Parties.* A participant may undertake activities directly or through a third party provided that such participant remains responsible for the activities of the third party.

(d) *Contributions.* Participants are expected to contribute funds or make in-kind contributions toward completion of approved market development projects. Contributions by third parties will be accepted as partially satisfying the contribution obligation of the participant.

(e) *Reimbursement.* CCC will make commodity certificates or, at the option of CCC, U.S. dollar funds, available up to the amount stated in the Targeted Export Assistance Program Agreement, to reimburse participants for expenditures incurred in conducting activities authorized by the agreement and described and budgeted in an activity plan approved in advance by FAS.

(f) *Consideration of Projects.* Targeted Export Assistance Project Agreements will be entered into by FAS only if it is determined that such agreements could counter or offset the effects of foreign unfair trade practices by contributing to the effective creation, expansion, or maintainance of markets for the affected commodities in foreign markets based on available supplies of those commodities for export and international market conditions. Activity plans will be required from organizations selected to participate in the Targeted Export Assistance program and will serve as a basis for the expenditure of CCC resources committed to Targeted Export Assistance Project Agreements. Activity plans will be reviewed according to the following criteria:

(1) The market potential for the commodities covered in the markets identified for promotional effort and the identification of conditions affecting the level of U.S. exports which could be influenced by the projects proposed;

(2) The extent and complexity of activities proposed in relation to each Cooperator's prior export market development experience and U.S. based staff resources;

(3) The likelihood of these activities influencing conditions affecting the level of U.S. exports.

(4) Anticipated U.S. industry and third party contributions to the projects proposed, as indicators of the potential success of those activities which would require such support to succeed;

(5) Provision for appropriate monitoring and evaluation of activities proposed within the plan.

§ 1485.4 Targeted Export Assistance/Export Incentive Program Agreements.

(a) *Eligible Commodities.* Agreements entered into under this section will be for the purpose specified in § 1485.3(a), when FAS has determined that branded promotion of the commodity in export markets will be a preferred means of expanding total U.S. exports of the commodity concerned.

(b) *Eligible Organizations.* TEA/EI agreements will be entered into wit private U.S. entities.

(c) *Use of Third Parties.* An entit that enters into a TEA/EIP Agreement may undertake market development activities directly or through third party provided such entity remains responsible for the activity.

(d) *Consideration of Projects.* TEA EIP Agreements will be entered int by FAS only if it is determined tha such agreements with private firm could counter or offset the effects o foreign unfair trade practices by contributing to the effective creation, expansion, or maintenance of market for the affected commodities in foreign markets. Project proposals will b reviewed in relation to market conditions in the countries where activitie are proposed, and in relation to th proposing firms prior experience in exporting and in market promotion activities abroad, based upon the sam criteria set forth in § 1485.3(f)(1-3).

§ 1485.5 Program Participation and Benefits.

(a) This section establishes requirements applicable only to participatio in Targeted Export Assistance Projec Agreements and any other agreemen with CCC that specifically incorporates the provision of this part.

(b) *General.* It is the policy of CC to insure that the benefits generate by agreements for the development o foreign markets for United States agricultural commodities are as broadl distributed throughout the relevan agricultural sector as feasible and, particularly, that no program participan derives an unfair advantage or benefi from activities conducted pursuant t the agreement, whether funded wit CCC assets or industry contributions.

(c) *Industry Participation.* When required by CCC, program participant entering into an agreement shal promptly furnish to CCC for approva its criteria for the selection of U.S. agricultural industry representatives t participate in activities conducted pursuant to the agreement, such as trad teams, sales teams, and trade fair and its criteria for the selection o firms to participate in U.S. brand-iden tified promotions. Such criteria must ensure participation on an equitable basis by a representative cross section of the relevant U.S. agricultural industry. If CCC requests submission of criteria for approval, the program participant shall not make any selections using criteria disapproved by CCC after the program participant has been notified of CCC's disapproval.

(d) *Distribution of Information.* All program participants shall provide, on a timely basis, upon request of any entity in the United States, other than a representative of a foreign government, any and all data developed and produced with CCC assets or funds of the program participant contributed under the terms of the agreement with CCC. Any fee charged in connection therewith may not exceed the costs incurred in assembling, duplicating and distributing the requested material.

(e) *Export Activities and Related Services.* (1) Neither program participants nor affiliated organizations shall, during the term of the agreement, make export sales of agricultural commodities of the kind which are promoted, in whole or in part, by use of CCC assets.

(2) Neither program participants nor affiliated organizations may assess fees for services provided to exporters in facilitating an export sale if the promotional activities intended to directly result in that specific export sale are supported, in whole or in part, by CCC assets. This paragraph applies to activities such as those involving discussions with potential buyers or the solicitation of specific sales including activities performed by sales teams and performed through trade fairs rather than activities of a more general promotional nature. This paragraph does not apply to checkoffs or membership dues based on commodity sales when such assessments are a condition of membership in the participating organization.

(3) Participants in approved program activities shall not use the activities to promote private self-interests or conduct private business, except as members of sales teams or as part of a U.S. brand-identified promotion when such activities are specifically approved by CCC.

§ 1485.6 Compliance with Program Requirements.

(a) Within 30 days after the effective date of these regulations, program participants shall submit a written statement to the Vice President, CCC, who is the Administrator, Foreign Agricultural Service (FAS), that neither they, nor their affiliated organizations, will, after the effective date of these regulations, make export sales of agricultural commodities promoted, in whole or in part, by the use of CCC assets during the term of an agreement between the program participant and CCC within the scope of this part 1485. CCC may, from time to time, require program participants to submit certifications for purposes of this part as to export sales.

(b) In the event of noncompliance with any provisions of these regulations CCC may disallow a claim submitted under an agreement for expenses incurred after the effective date of these regulations or terminate the agreement in addition to any other remedies available to CCC.

§ 1485.7 Paperwork Reduction Act assigned number.

Information collection requirements contained in these regulations have been submitted to OMB for approval under control number 0551-0027. However, these requirements are not effective until final clearance is received from OMB.

PART 1487—NONCOMMERCIAL RISK ASSURANCE PROGRAM

Subpart—Assuring Against Defaults Caused by Noncommercial Risk Occurrences

GENERAL

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1487.2 Definition of terms.

ASSURANCE AGAINST NONCOMMERCIAL RISK DEFAULTS

1487.3 Application for assurance agreement.

1487.4 Assurance agreement.

ASSURANCE RATES AND FEES

1487.5 Assurance rates.
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DOCUMENTS REQUIRED AFTER EXPORT

1487.7 Evidence of export.

LOSSES CAUSED BY NONCOMMERCIAL RISK DEFAULTS

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AUTHORITY: Sec. 5(f), 62 Stat. 1072 (15 U.S.C. 714c(f)).

Subpart—Assuring Against Defaults Caused by Noncommercial Risk Occurrences

SOURCE: 43 FR 4033, Jan. 31, 1978, unless otherwise noted.

GENERAL

§ 1487.1 General statement

(a) This part contains the regulations governing the Commodity Credit Corporation noncommercial risk assurance program, also referred to herein as "GSM-101." Exporters of U.S. agricultural commodits usually require importers to guarantee payment of the selling price of commodities sold on a deferred payment basis. The guarantee may be in form of an irrevocable foreign bank letter of credit in favor of the exporter who may draw drafts for the deferred payments to be presented to the foreign bank as such payments become due. Or the foreign bank letter of credit may authorize the exporter to draw drafts on and for acceptance by a U.S. correspondent bank of the foreign bank. In either case, the exporter may discount the receivable with a U.S. bank or financial institution so that he may realize the proceeds of his sale prior to the deferred payment dates. GSM-101 is designed to protect the exporter or his assignee against loss from noncommercial risk defaults in payments by a foreign bank under the letter of credit issued by the foreign bank to secure payments called for by the export credit sales agreement, or under a related obligation arising from the foreign bank's letter of credit. By transferring the noncommercial risk of loss from exporters and their financing institutions to CCC, GSM-101 is intended to:

(1) Facilitate exportation,

(2) Forestall or limit declines in exports,

(3) Permit exporters to meet competition from other countries, and

(4) Increase commercial exports of U.S. agricultural commodities.

(b) GSM-101 will be administered by the Office of the General Sales Manager, U.S. Department of Agriculture.

(c) The provisions of Pub. L. 83-664 (Cargo Preference Act) are not applicable to shipment of commodities assured as to noncommercial risks under GSM-101.

(d) GSM-101 will be supplemented by USDA announcements.

§ 1487.2 Definition of terms.

(a) "Assistant Sales Manager" means the Assistant Sales Manager, Commercial Export Programs, Office of the General Sales Manager, or his designee.

(b) "Assured value" means the maximum amount CCC agrees to pay the exporter under the assurance agreement. The assured value shall not exceed the unpaid balance of the port value of the commodity prior to shipment plus interest as indicated in the export credit sale but not more than 6 percent per annum on such unpaid balance to the date(s) payment is due.

(c) "Assurance agreement" means the written agreement under which CCC undertakes, for a period not exceeding 3 years after export, to protect the exporter or assignee from defaults by a foreign bank caused by noncommercial risks under the foreign bank's letter of credit supporting the exporter's export credit sales contract or under the foreign bank's related obligation under its letter of credit to the exporter.

(d) "CCC" means the Commodity Credit Corporation, U.S. Department of Agriculture.

(e) "Date of export" means the onboard date of an ocean bill of lading or onboard ocean carrier date of an intermodal bill of lading.

(f) "Date of sale" means the earliest date the exporter has knowledge that a contractural obligation exists with the importer under which a firm dollar-and-cent price has been established or a mechanism to establish the price has been agreed upon.

(g) "Export credit sale" means an agreement by an exporter to sell eligible U.S. agricultural commodities for U.S. dollars to an importer. The agreement shall provide for export of the commodities from the United States to eligible countries within 12 months from the contract date and for payment by the importer on a deferred payment basis not exceeding 36 months from the date(s) of export.

(h) "Exporter" means an individual, group of individuals, partnership, corporation, association, cooperative, or any other entity:

(1) That is financially responsible,

(2) Engaged in the business of buying or selling commodities for export and for this purpose maintains a bona fide business office in the United States, its territories or possessions, and has someone on whom service of judicial process may be had within the United States, and

(3) Not suspended or debarred from contracting with or participating in any program administered by CCC on the date of issuance of the assurance agreement.

(i) "Foreign bank letter of credit" means (1) an irrevocable commercial letter of credit providing for deferred payments and issued in favor of the exporter by a banking institution in the destination country pursuant to an export credit sale requiring payment in U.S. dollars; or (2) an irrevocable commercial letter of credit issued in favor of the exporter by a banking institution in the destination country pursuant to an export credit sale requiring payment in U.S. dollars, which is supported by a related obligation providing for deferred payment in U.S. dollars from the banking institution issuing the letter of credit to a financial institution in the United States.

(j) "Importer" means a foreign buyer who enters into an export credit sale contract on a deferred payment basis with a U.S. exporter.

(k) "Noncommercial risk" means the risk of loss as a result of (1) failure by the foreign bank, through no fault of its own, to make remittances pursuant to its letter of credit or related obligation arising out of the letter of credit because of:

(i) War, hostilities, civil war, rebellion, insurrection, or civil commotion; or

(ii) Expropriation, confiscation, or like action by government; or

(iii) The imposition by governmental authority of any order, decree, or regulation of general applicability having the force of law; or

(iv) The failure of the central exchange authority to transfer local currency into dollars; or

(2) Failure of the foreign bank to make payments for any reason, if it is an instrumentality of or is wholly-owned by the foreign government.

(l) "OGSM" means the Office of the General Sales Manager, U.S. Department of Agriculture.

(m) "Port value" means the total value of the export credit sale, less any discounts or allowances, basis f.a.s. or f.o.b. at U.S. ports. Such value shall include the value of the upward loading tolerances, if any, as provided for by the export credit sales contract.

(n) "USDA announcement" means an announcement issued by the U.S. Department of Agriculture supplementing these regulations. As announcement may include identification of eligible agricultural commodities and countries, dollar limitation of CCC exposure in a country and other information.

[43 FR 4033, Jan. 31, 1978, as amended at 43 FR 59078, Dec. 19, 1978; 46 FR 9556, Jan. 29, 1981]

ASSURANCE AGAINST NONCOMMERCIAL RISK DEFAULTS

§ 1487.3 Application for assurance agreement.

(a) An exporter shall submit a written application for an assurance agreement to the office specified in § 1487.15. An application may be made by telephone, but it must be confirmed in writing. An application shall include the full business name and address of the exporter and the following:

(1) Name of the destination country.
(2) Name and address of importer.
(3) Date of sale.
(4) Exporter's sale number.
(5) Delivery period.
(6) Kind and description of the commodity.
(7) Quantity.
(8) Port value.
(9) Assured value.
(10) Estimated payment schedule(s) for each shipment to be made under the assurance agreement showing the estimated payment due dates and estimated amounts due separately for both principal and interest.

(b) An application for an assurance agreement may be rejected, approved with modifications, or approved as submitted by the Assistant Sales Manager. In the event the application is approved, the Assistant Sales Manager shall cause an assurance agreement to be issued in favor of the U.S. exporter.

§ 1487.4 Assurance agreement.

(a) The assurance agreement shall provide that CCC will pay the U.S. exporter or his assignee in U.S. dollars for losses resulting from the failure of the foreign bank which issues the bank letter of credit securing the export credit sale to honor drafts drawn upon it or otherwise to remit amounts properly due the exporter or the assignee, when such defaults are caused by the occurrence of noncommercial risks arising after export.

(b) The assurance coverage shall become effective on the date(s) of export(s) and continue in force for the period covered by the payment schedule not exceeding 36 months from the dates of such export(s). Exports made prior to receipt by CCC of a telephonic or written application for an assurance agreement or exports made after the final date for export shown on the assurance agreement or amendment thereof are ineligible for assurance coverage, except where it is determined to be in the interest of CCC.

(c) The assurance agreement may contain such terms, conditions, and limitations not inconsistent with GSM-101 as are deemed necessary or desirable by the Assistant Sales Manager.

(d) The assurance agreement may be amended by the parties thereto provided such amendment is in conformity with GSM-101 at the time of amendment. Amendments may include a change in the credit period or an extension of time to export. Any amendment of the assurance agreement may be subject to an increase in the assurance fee. Any amendment shall indicate its effective date and shall apply only to exports made on or after that date.

ASSURANCE RATES AND FEES

§ 1487.5 Assurance rates.

The assurance rates will be based upon the length of the payment terms provided by the export credit sale contract, the degree of risk that CCC assumes, and any other factors which CCC believes should be considered. Assurance rates charged by CCC under GSM-101 will be available upon request from the office specified in § 1487.15.

§ 1487.6 Assurance fees.

(a) The assurance fee will be computed on the basis of the assurance rate and the assured value.

(b) The exporter shall remit, with his written application, the full amount of the fee based on the applicable rate. If the application is submitted by telephone, telex or TWX, final approval of the application will not be given until the fee has been recieved by CCC. Approval of the application will be final and refund of the assurance fee will not be made after approval unless the Assistant Sales Manager determines that such a refund will be in the interest of Commodity Credit Corporation.

(c) If the application for an assurance agreement is not approved or is approved only for a part of the coverage requested, a full or pro rata refund of the remittance will be made. The assurance fee shall be made payable to CCC and mailed to the office specified in § 1487.15.

DOCUMENTS REQUIRED AFTER EXPORT

§ 1487.7 Evidence of export.

(a) The exporter shall provide a written report to the office specified in § 1487.15 within 20 days following each export covered under the assurance agreement. This report shall include the following:

(1) Assurance agreement number.

(2) Date of export.

(3) Exporter's sale number.

(4) Port value exported.

(5) Kind, quantity, and description of the commodity exported.

(6) Statement that the agricultural commodities of the grade, quality, and quantity called for in his sales contract with the foreign importer have been exported.

(7) A statement that he has in his files documents evidencing the obligation of the foreign importer and that he will retain such documents in his files until three years after maturity or the related assurance agreement.

(8) A statement that a letter of credit has been opened in favor of the exporter to cover the port value of the commodity exported.

(9) A payment schedule showing the payment due dates and amounts due separately for both principal and interest for which credit has been extended to the importer.

(b) If the report required by paragraph (a) of this section is not received by CCC within 20 days after the date of the export, the assurance agreement shall become null and void with respect to defaults in payments applicable to such export. This provision may be waived by the Assistant Sales Manager for good cause shown.

LOSSES CAUSED BY NONCOMMERCIAL RISK DEFAULTS

§ 1487.8 Notice of default.

(a) If the foreign bank issuing the letter of credit fails to make a remittance pursuant to the terms of the letter of credit or a related obligation arising under the letter of credit and such default appears to be attributable to the occurrence of a noncommercial risk, the exporter or the assignee shall promptly furnish a written notice of default to the Treasurer, CCC at the address indicated in § 1487.11(b). The notice shall include the assurance agreement number, the amount due, the date of refusal to pay, and reason for the default.

(b) Within 30 days after the notice of default, the exporter or the assignee shall furnish a claim for loss with the following information and documents to the Treasurer, CCC:

(1) Assurance agreement number.

(2) A certification that the scheduled payment has not been received.

(3) A copy, certified as true and correct by the exporter, of each of the following:

(i) Foreign bank letter of credit securing the export credit sale or the related obligation of the foreign bank under its letter of credit.

(ii) Export credit sales contract.

(iii) Ocean carrier or intermodal bill(s) of lading with onboard ocean carrier date for each shipment.

(iv) Invoice(s) showing the port value of the commodities exported.

(c) A claim for a loss by the exporter or assignee shall not be honored if it is not made in writing to the Treasurer, CCC prior to the expiration of six months from the date of default of the scheduled payment.

§ 1487.9 Payment of loss.

(a) Upon receipt of the information required under § 1487.8, and such evidence as CCC may deem necessary for the purpose of establishing that the loss was occasioned by the occurrence of a noncommercial risk default, CCC shall promptly determine whether or not a loss has occurred for which CCC is liable under the applicable assurance agreement and these regulations. CCC will promptly notify the exporter of its detemination.

(b) CCC's maximum liability will be limited to the assured value as shown in the assurance agreement. If the assured value covers only a percentage of the port value exported, the liability of CCC shall be limited to such percentage of the loss.

(c) CCC shall only honor claims for losses on amounts not paid as scheduled. CCC shall not honor claims for amounts due under an accelerated payment clause in the export credit sales contract or the letter of credit or any related obligation under the letter of credit unless it is determined to be in the interest of CCC by the Assistant Sales Manager.

(d) If CCC determines that it is liable to the exporter and/or his assignee, the exporter and/or his assignee shall execute and submit to CCC an instrument, in form and substance satisfactory to CCC, subrogating to CCC their respective rights for the amount of payment in default under the applicable export credit sale. After receipt of an instrument of subrogation, CCC will remit the amount of the loss plus interest, at the Federal Reserve Bank of New York discount rate in effect on the date of default, beginning with the 31st day after notice of default was received by CCC and continuing to the date payment is made by CCC.

(e) Upon payment of a claim to the exporter or his assignee, the exporter or his assignee shall cooperate with CCC to effect recoveries from the foreign bank and/or the importer.

(f) Notwithstanding any other provision of the regulations set forth in this subpart to the contrary, with regard to commodities shipped to which the payment guarantee is applicable, CCC will not hold the assignee responsible or take any action or raise any defense against the assignee for any action, omission or statement by the exporter over which the assignee has no control provided that (1) the exporter complies with the reporting requirements under § 1487.7 and (2) the exporter or the exporter's assignee furnishes the statements, documents and evidence specified in §§ 1487.8 and 1487.9.

[43 FR 4033, Jan. 31, 1978, as amended at 46 FR 9556, Jan. 29, 1981]

§ 1487.10 Recovery of losses.

(a) Upon payment of loss to the exporter or his assignee, CCC will notify the importer and/or the foreign bank of its rights under the subrogation agreement to recover all monies in default.

(b) In the event monies for the defaulted payment are received by the exporter or the asignee from the importer, foreign bank, or any other source whatsoever, such monies shall be immediately paid to the Treasurer, CCC.

(c) Recoveries made by CCC from the importer or foreign bank and recoveries received by CCC from the exporter or assignee or any other source shall be allocated by CCC to the exporter or assignee and CCC on a pro rata basis as their respective interest may appear.

(d) Notwithstanding any other terms of the assurance agreement, the exporter shall be liable to CCC for any amounts paid by CCC under the assurance agreement when and if it is determined by CCC that the exporter has been or is in breach of any contractual obligation, certification or warranty made by him for the purpose of obtaining the assurance agreement.

MISCELLANEOUS PROVISIONS

§ 1487.11 Assignment.

(a) The exporter may make an assignment of proceeds payable by CCC under the assurance agreement to only a bank or other financing institutions in the United States. The assignment shall cover all amounts payable under the assurance agreement not already paid and shall not be made to more than one party.

(b) An original and two copies of the written notice of each assignment of monies that may be due or come due from CCC together with one signed copy of the instrument of assignment, which shall be a true copy of the original, must be filed by the assignee with the Treasurer, CCC, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013.

(c) Receipt of the notice of assignment shall be acknowledged by an official of CCC.

§ 1487.12 Covenant against contingent fees.

The exporter warrants that no person or selling agency has been employed or retained to solicit or secure the assurance agreement and that there is no agreement or understanding for any commission, percentage, brokerage, or contingent fee for soliciting or securing the assurance agreement, except in the case of bona fide employees or bona fide established commercial or selling agencies maintained by the exporter for the purpose of securing business. For breach or violation of this or other obligations or warranties undertaken by the exporter in regard to a GSM-101 assurance agreement, CCC shall have the right notwithstanding other rights provided under these regulations to annul coverage for any commodities not yet shipped and/or to proceed against the exporter.

[46 FR 9556, Jan. 29, 1981]

§ 1487.13 Officials not to benefit.

No Member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of the assurance agreement or to any benefit that may arise therefrom, but this provision shall not be construed to extend to the assurance agreement if made with a corporation for its general benefit.

§ 1487.14 Exporter's records and accounts.

Authorized officials of USDA shall have access to and the right to examine any pertinent books, documents, papers, and records of the exporter and/or the assignee involving transactions related to the export credit sale covered by the assurance agreement until 3 years after expiration of the coverage of the related assurance agreement.

§ 1487.15 Communications.

Unless otherwise provided, written requests, notifications, or communications concerning the assurance agreement shall be addressed to the Assistant Sales Manager, Commercial Export Programs, Office of the General Sales Manager, U.S. Department of Agriculture, Washington, DC 20250.

(Approved by the Office of Management and Budget under control number 0551-0010)

[43 FR 4033, Jan. 31, 1978, as amended at 47 FR 746, Jan. 7, 1982]

PART 1488—FINANCING OF SALES OF AGRICULTURAL COMMODITIES

Subpart A—Financing of Export Sales of Agricultural Commodities from Private Stocks Under CCC Export Credit Sales Program (GSM-5)

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AUTHORITY: Sec. 5(f), 62 Stat. 1072 (15 U.S.C. 714c) and sec. 4(a), 80 Stat. 1538, as amended by sec. 101, 92 Stat. 1685 (7 U.S.C. 1707a(a)).

Subpart A—Financing of Export Sales of Agricultural Commodities From Private Stocks Under CCC Export Credit Sales Program (GSM-5)

SOURCE: 42 FR 10999, Feb. 25, 1977, unless otherwise noted.

GENERAL

§ 1488.1 General statement.

(a) Except as otherwise provided in this paragraph (a), the regulations and the supplements thereto contained in this Subpart A supersede the regulations and supplements revised April 1975, and set forth the terms and conditions governing the CCC Export Credit Sales Program (GSM-5). The maximum financing period shall be three years. The regulations and supplements as revised in April 1971 and April 1975, shall remain in effect for all transactions under financing approvals issued thereunder.

(b) Subject to the terms and conditions set forth in this Subpart A, CCC will purchase for cash, after delivery, the exporter's account receivable arising from the export sale.

(c) The provisions of Pub. L. 83-664 are not applicable to shipments under this program.

(d) The regulations contained in this Subpart A may be supplemented by such additional terms and conditions, applicable to specified agricultural commodities, and, to the extent that they may be in conflict or inconsistent with any other provisions of this Subpart A, such additional terms and conditions shall prevail.

§ 1488.2 Definition of terms.

As used in this Subpart A and in the forms and documents related thereto, the following terms shall have the meanings assigned to them in this section:

(a) "Account receivable" means the contractual obligation of the foreign importer to the exporter for the port value of the commodity delivered for which the exporter is extending credit to the importer. The account receivable shall be evidenced by documents, in form and substance satisfactory to CCC, establishing the contractual obligation between the U.S. exporter and the foreign importer. The account r
ceivable shall provide for (1) payme
of principal and interest in U.S. dolla
in the United States, (2) interest in a
cordance with § 1488.14, and (3) acce
eration of payment thereunder in a
cordance with these regulations.

(b) "Agency or branch bank" mea
an agency or branch of a foreign ban
supervised by New York State bankir
authorities or the banking authoriti
of any other State providing simil
supervision, and approved by the Co
troller, CCC.

(c) "Assistant Sales Manager" mea
the Assistant Sales Manager, Comme
cial Export Programs, Office of th
General Sales Manager.

(d) "Bank obligation" means an obl
gation, acceptable to CCC, of a U.
bank, a foreign bank, an agency
branch bank, to pay to CCC in U.
dollars the amount of the account r
ceivable, plus interest in accordanc
with § 1488.14. The bank obligatio
shall be in the form of an irrevocabl
letter of credit issued by a U.S. ban
or a branch bank, or confirmed or a
vised by a U.S. bank or any agency
branch bank in accordance wit
§ 1488.12. The bank obligation sha
provide for payment under the term
and conditions of the financing agre
ment and shall be payable not late
than the date of expiration of the f
nancing period or of the bank oblig
tion, whichever occurs first, if pa
ment is not received from othe
sources.

(e) "CCC" means the Commodit
Credit Corporation, U.S. Departme
of Agriculture.

(f) "Carrying charges" means sto
age, insurance, and interest charges i
volved in the cost of storing the com
modity before delivery as provided f
in the sales contract, and other inc
dential costs as may be approved b
the Assistant Sales Manager.

(g) "Commercial risk" means risk
loss due to any cause other than spec
fied as noncommercial risk in par
graph (u) of this section.

(h) "Date of delivery" means the o
board date of the ocean bill of ladin
or the date of an airway bill, or, if e
ported by rail or truck, the date
entry shown on an authenticated lan
ing certificate or similar docume

issued by an official of the government of the importing country. If delivery is before export, the date of delivery means (1) the date(s) of the warehouse receipt(s), or other evidence acceptable to CCC, covering the commodity in a warehouse acceptable to CCC, or (2) the onboard carrier (truck, rail car or lash or seabee barge) date of a through bill of lading covering commodities in a container or a lash or seabee barge at a U.S. inland or coastal point.

(i) "Date of sale" means the earliest date the exporter has knowledge that a contractual obligation exists with the foreign buyer under which a firm dollar and cent price has been established or a mechanism to establish the price has been agreed upon.

(j) "Delivery" means the delivery required by the export sale contract to transfer to the importer full or conditional title to the agricultural commodity. Delivery before export may be (1) in a warehouse in the United States acceptable to CCC by issuance or transfer of the warehouse receipt to the importer, or (2) f.a.s. or f.o.b. U.S. inland or coastal loading point, if the commodity is loaded in a container on a truck or rail car, or in a lash or seabee barge for shipment to a point of export under a through bill of lading. Delivery at point of export shall be f.a.s. or f.o.b. export carrier at U.S. ports, at U.S. airports, at U.S. border points of exit or, if transshipped through Canada, at ports on the Great Lakes or the St. Lawrence River.

(k) "Eligible commodities" means agricultural commodities, including eligible cotton, produced in the United States and designated as eligible for export under CCC's Export Credit Sales Program in a USDA announcement. Commodities which have been purchased from CCC are eligible for export as private stocks. Exports of commodities pursuant to any CCC barter contract, Pub. L. 480 or AID agreement, or direct loan by the Export-Import Bank are not eligible for financing under this program. Commodities delivered prior to CCC receiving the sale registration request in accordance with § 1488.4 are not eligible for financing under this program unless such financing is determined by the Vice President, CCC, or the Assistant Sales Manager, to be in the interest of CCC.

(l) "Eligible cotton" means Upland and Extra Long staple cotton grown in the United States: *Provided, however,* That reginned or repacked cotton, as defined in regulations of the U.S. Department of Agriculture under the U.S. Cotton Standards Act (7 CFR 28.40), by-products of cotton such as cotton mill waste, motes, and linters, and any cotton that contains any by-products of cotton are not eligible for export financing hereunder. CCC's determination as to the eligibility of cotton shall be final.

(m) "Eligible destination" means the country which is named in the financing agreement and which meets the licensing requirements of the U.S. Department of Commerce.

(n) "Eligible exporter" or "exporter" means a person (1) who is engaged in the business of buying or selling commodities and for this purpose maintains a bona fide business office in the United States, its territories or possessions, and has someone on whom service of judicial process may be had within the United States, (2) who is financially responsible, and (3) who is not suspended or debarred from contracting with or participating in any program financed by CCC on the date of issuance of the financing approval.

(o) "OGSM" means the Office of the General Sales Manager, U.S. Department of Agriculture.

(p) "Financing agreement" means the exporter's request for a sale registration as approved by the Assistant Sales Manager, including the terms and conditions of the regulations in effect on the date of approval.

(q) "Financing period" means the number of months over which repayment is to be made. Such period shall start on the date of delivery or the weighted average delivery date of the commodities to be exported under the financing agreement, and shall expire on the expiration of the bank obligation or the specified period over which repayment is to be made, whichever occurs first.

(r) "Foreign bank" means a bank which is not a U.S. bank or an agency or branch bank, and includes a foreign branch of a U.S. bank.

(s) "Foreign importer" or "importer" means the foreign buyer who purchases the commodities to be exported under a financing agreement and executes the documents evidencing the account receivable assigned to CCC.

(t) "GSM-5" means the regulations contained in this Subpart A, and supplements thereto, setting forth the terms and conditions governing the CCC Export Credit Sales Program.

(u) "Noncommercial risk" means risk of loss due to (1) inability of the foreign bank through no fault of its own to convert foreign currency to dollars, or (2) non-delivery into the eligible destination of the commodity covered by a financing agreement through no fault of the foreign bank or importer or exporter because of the cancellation by the government of the eligible destination of previously issued valid authority to import such shipment into the eligible destination or because of the imposition of any law or of any order, decree, or regulation having the force of law, which prevents the import of such shipment into the eligible destination, or (3) inability of the foreign bank to make payment due to war, hostilities, civil war, rebellion, revolution, insurrection, civil commotion, or other like disturbance occurring in the eligible destination, expropriation, or confiscation, or other like action by the government of the eligible destination country, or (4) failure of the foreign bank to make payment for any reason if it is an instrumentality of or is wholly owned by the foreign government.

(v) "Port value" means the net amount of the exporter's sales price of the commodity to be exported under the financing agreement, (1) basis f.a.s. or f.o.b. export carrier at U.S. ports, at U.S. border points of exit, at U.S. airports if shipped by air, or, if transshipped through Canada at ports on the Great Lakes, or on the St. Lawrence River, or (2) basis U.S. warehouse for commodities delivered to such warehouse before export, or (3) basis f.a.s. or f.o.b. U.S. inland or coastal loading point for commodities delivered before export under through bill of lading. The port value shall not include ocean freight for a c. & f. sale or ocean freight and marine and war risk insurance for a c.i.f. sale but may include carrying charges as provided for in the sales contract. The net amount of the exporter's sales price means the exporter's contract price for the commodities, on the basis stated above, less any payments made to the exporter and less any discounts, credits, or allowances by the exporter.

(w) "Sale" means a contract to sell on credit U.S. agricultural commodities to be financed under GSM-5.

(x) "United States" means the 50 States, the District of Columbia, and Puerto Rico.

(y) "U.S. bank" means a bank organized under the laws of the United States, a State, or the District of Columbia.

(z) "USDA announcement" means an announcement published monthly by the U.S. Department of Agriculture (USDA), and which includes the list of eligible commodities and interest rates under GSM-5.

(aa) "Vice President, CCC" means the Vice President who is the General Sales Manager, Office of the General Sales Manager.

[42 FR 10999, Feb. 25, 1977, as amended at 42 FR 30833, June 17, 1977; Amdt. 5, 43 FR 25992, June 16, 1978]

FINANCING EXPORT SALES

§ 1488.3 General.

When considering the extension of CCC credit for the purpose of financing agricultural commodities, CCC will take into account the extent to which CCC credit financing will:

(a) Permit U.S. exporters to meet competition from other countries.

(b) Prevent a decline in U.S. commercial export sales.

(c) Substitute commercial dollar sales for sales made pursuant to Pub. L. 480 or other concessional programs.

(d) Result in a new use of the agricultural commodity in the importing country.

(e) Permit expanded consumption of agricultural commodities in the importing country and thereby increase total commercial sales of agricultural commodities to the importing country.

§ 1488.4 Submission of requests for sale registrations.

(a) An eligible exporter shall submit a request for a sale registration for financing to the office specified in § 1488.22.

(b) Requests for sale registrations shall be in writing. If such a request is made by telephone, it must be confirmed by letter or wire.

(c) The total amount requested to be registered under a sale shall not exceed the sale contract value, including the upward tolerance, if any.

(d) Requests for sale registration shall incorporate by reference all terms and conditions of GSM-5. The following information shall also be included in the exporter's request for a sale registration:

(1) The name, class, grade, or quality, as applicable, and quantity of the commodity to be exported.

(2) The country of destination.

(3) The port value of the commodity to be exported and the sale contract tolerance, if applicable.

(4) The date of sale and exporter's sale number.

(5) The date of delivery or the period for delivery and the month in which application for payment will be submitted.

(6) The financing period.

(7) Whether the bank obligation assuring payment of the account receivable will be issued by a U.S. bank, branch bank, or foreign bank. If it will be issued by a foreign bank, its name and address, and the name of the confirming U.S. bank, branch bank, or agency bank (if approved as provided in § 1488.12b), and the percentage of confirmation.

(8) The name and address of the foreign importer.

(9) If delivery of the commodity to be exported is before export in a warehouse, the name and address of the warehouse to which delivery is to be made.

(10) If the commodity will be sold through an intervening purchaser, the name and address of the intervening purchaser, and a statement that the sale of the commodity is or will be conditioned on its resale by the intervening purchaser and that the commodity will be shipped directly to the foreign importer in the destination country specified in paragraph (d)(2) of this section pursuant to a contract in which the foreign importer agrees to pay the U.S. exporter the amount to be financed in accordance with the terms of GSM-5 financing agreement.

(11) Any additional information as determined by CCC.

[42 FR 10999, Feb. 25, 1977, as amended by Amdt. 5, 43 FR 25992, June 16, 1978]

§ 1488.5 Acceptance of sale registrations.

(a) Upon receiving a request for a sale registration complying with the applicable provisions of this subpart, the Assistant Sales Manager may approve the registration of the sale. If approved, the exporter will be notified in writing of the financing agreement number which will constitute notice that the sale is registered and eligible for financing.

(b) [Reserved]

(c) CCC reserves the right to reject any and all requests for sale registration.

(d) The registration of a sale shall create a financing agreement between the exporter and CCC which shall consist of the exporter's request for a sale registration, CCC's acceptance of the sale registration, the applicable terms and conditions of this Subpart, including amendments and supplemental announcements hereunder which are in effect on the date of approval.

(e) The financing agreement may contain such terms and conditions, not inconsistent with GSM-5, as are deemed necessary in the interest of CCC.

(f) An exporter shall promptly notify the Assistant Sales Manager when he is unable to fulfill his obligations under any sale registered with CCC.

[42 FR 10999, Feb. 25, 1977, as amended by Amdt. 6, 43 FR 29933, July 12, 1978]

§ 1488.6 Amendments to financing agreement.

The financing agreement may be amended provided such amendment is in conformity with GSM-5 at the time of amendment and is determined to be in the interest of CCC. Amendments may include extension of the period for delivery or the period for export, and change in the interest rate. After the commodity has been delivered, CCC will consider requests to increase the amount of the sale registration value for any quantity within the tolerance in the sales contract and for carrying charges provided such requests relate to the same sale as originally registered with CCC.

§ 1488.7 Expiration of period(s) for delivery and/or export.

(a) Unless delivery by the exporter to the importer is made within such period as may be provided in the financing agreement or any amendment thereof, or under paragraph (b) of this section, the financing agreement will no longer be valid.

(b) If the Assistant Sales Manager determines that delay in delivery was due solely to causes without the fault or negligence of the exporter, the period for delivery may be extended by CCC by the period of such delay.

(c) If delivery is made before export under the terms of the financing agreement, failure to export within the period specified therefor in the financing agreement shall constitute a breach of the financing agreement. In such case, if full payment under the bank obligation or account receivable has not been received, the account receivable and the bank obligation shall, at the option of the Assistant Sales Manager, become immediately due and payable, and liquidated damages shall be payable in accordance with § 1488.11.

DOCUMENTS REQUIRED FOR FINANCING

§ 1488.8 Documents required after delivery.

(a) CCC will purchase an exporter's account receivable only if the Treasurer, Commodity Credit Corporation, United States Department of Agriculture, Washington, DC 20250, receives the documents specified in paragraphs (b) through (e) of this section and any documentation and certifications required by any supplements to these regulations within forty-five days, or any extension thereof by the Treasurer or Assistant Treasurer, CCC, after date of delivery of commodities exported or to be exported under the financing agreement.

(b) The exporter shall submit a "Combined Application for Disbursement, Assignment of Account Receivable and Certification" which shall include:

(1) A written application for disbursement, showing the financing agreement number and the port value of the commodity delivered.

(2) An assignment of the account receivable arising from the export sale, in form and substance acceptable to CCC.

(3) The exporter's certification (i) that he has entered into a contract to sell an eligible commodity; (ii) of the date of sale, the grade, quality, quantity, agreed upon price for the commodity and payment terms and interest in accordance with the financing agreement; (iii) that he has in his files documents evidencing the export sale contract and the obligation of the importer to him for the financed portion of the export sale and will retain and furnish them to CCC on demand until 3 years after the end of the financing period; (iv) that agricultural commodities of the grade, quality, and quantity called for in the exporter's sale as registered with CCC have been delivered to the foreign importer; and (v) that he knows of no defenses to the account receivable assigned to CCC.

(c) A copy of the sales invoice to the foreign importer, or, if the commodity has been sold through an intervening purchaser, a copy of the exporter's sales invoice to the intervening purchaser and of the intervening purchaser's sales invoice to the foreign importer.

(d) A copy of the document evidencing export provided for in § 1488.9 and, if the consignee is other than the foreign importer named in the financing agreement, such additional information as CCC may request to show that export was made in accordance with the instructions of, or the export sale contract with, the foreign importer. If delivery is before export in a warehouse acceptable to CCC, the warehouse receipt or other documents acceptable to CCC evidencing delivery of the commodity to the importer or his agent. If delivery is before export in a container or a lash or seabee barge at a U.S. inland or coastal point, for export shipment under a through bill of lading, one copy of the through bill of lading with an onboard (truck, rail car, or lash or seabee barge) endorsement, dated and signed or initialed on behalf of the export carrier. The through bill of lading must be certified by the exporter as being a true copy and must show the quantity, the date, and place of loading the commodity on a truck, or rail car, or lash or seabee barge, the name of the originating carrier, the destination of the commodity, and the name of both the exporter and the importer.

(e) A bank obligation or obligations in accordance with § 1488.7(c), § 1488.10, § 1488.12 and paragraph (i) of this section, naming CCC as beneficiary, in form and substance acceptable to CCC, covering the amount of the application for disbursement, citing the financing agreement number; and providing for the payment of interest in accordance with § 1488.14.

(f) On receipt of the documents described in paragraphs (b) through (e) of this section and any documentation and certifications required by any supplements to these regulations, the Treasurer, CCC will pay promptly to the exporter the amount of the account receivable or the dollar amount of sales registered in accordance with § 1488.5, whichever is the lesser.

(g) If an acceptable application for disbursement and the supporting documents described in paragraphs (b) through (e) of this section have not been received by CCC within 45 days from the date of the delivery, or any extension thereof by the Treasurer or Assistant Treasurer, CCC, the financing agreement shall be void.

(h) [Reserved]

(i) If for any reason a draft drawn under a foreign bank obligation is dishonored or if the issuing bank is insolvent, in bankruptcy, in receivership, or in liquidation, or has made an assignment for the benefit of creditors, or for any other reason discontinues or suspends payments to depositors or creditors, or otherwise ceases to operate on an unrestricted basis, any balance due on the account receivable assured by the obligation issued by such bank shall, at the option of CCC, become immediately due and payable. CCC may permit the substitution of another acceptable foreign bank obligation covering such balance due if confirmed in accordance with § 1488.12.

[42 FR 10999, Feb. 25, 1977, as amended at 42 FR 27569, May 31, 1977; Amdt. 5, 43 FR 25992, June 16, 1978]

§ 1488.9 Evidence of export.

(a) If the commodity is exported by rail or truck, the exporter shall furnish to the Treasurer, CCC, one copy of the bill of lading covering the commodity exported, certified by the exporter as being a true copy, and an authenticated landing certificate or similar document issued by an official of the government of the country to which the commodity is exported, showing the quantity, the gross landed weight of the commodity, the place and date of entry, and the name and address of both the exporter and the importer.

(b) If the commodity is exported by ocean carrier, the exporter shall furnish to the Treasurer, CCC, one non-negotiable copy or photo copy or other type of copy of either (1) an on-board ocean bill of lading or (2) an ocean bill of lading with an onboard endorsement, dated and signed or initialed on behalf of the carrier. The bill of lading must be certified by the exporter as being a true copy and must show the quantity, the date and place of loading the commodity, the name of the vessel, the destination of the commodity and the name and address of both the exporter and the importer.

(c) If the commodity is exported by aircraft, the exporter shall furnish to the Treasurer, CCC, one non-negotiable copy of an airway bill, dated and signed or initialed on behalf of the carrier. The airway bill must be certified by the exporter as being a true copy and must show the date and place of loading the commodity, the name of the airline, the destination of the commodity, and the name and address of both the exporter and the importer.

(d) If the exporter is unable to supply documentary evidence of export as specified in this section, he shall submit such other documentary evidence as may be acceptable to CCC.

(e) For commodities transshipped through Canada via the Great Lakes or the St. Lawrence River, the exporter shall certify that the commodity transshipped was produced in the United States.

§ 1488.9a Evidence of export for commodities delivered before export.

For commodities delivered before export under a financing agreement for which the financial period is 12 months or less, the exporter shall furnish a certification to the Treasurer, CCC, within 60 days from the date of delivery or such extension of time as may be granted by the Treasurer or Assistant Treasurer, CCC, certifying that the commodities have been exported. The certification must include the name of the ocean carrier, the date the commodities were loaded aboard the ocean carrier and the financing agreement number.

[Amdt. 5, 43 FR 25992, June 16, 1978]

DOCUMENTS REQUIRED AFTER FINANCING

§ 1488.10 Evidence of entry into country of destination.

(a) Commodities exported under a financing agreement must enter the destination country specified in the financing agreement.

(b) For a financing agreement under which the financing period is in excess of 12 months, within 90 days, or such extension of time as may be granted in writing by the Assistant Sales Manager, following shipment from the United States of any agricultural commodity exported under the financing agreement, the exporter shall furnish to the office specified in § 1488.22, documentary evidence verifying entry of the commodity into the country of destination specified in the financing agreement. The documentary evidence must:

(1) Identify the agricultural commodity (or permit identification through supplementary documents also furnished) as that exported under the financing agreement,

(2) State the quantity and date of entry of the commodity into the destination country, and

(3) Be signed by (i) a customs official of the destination country, or (ii) the importer, or (iii) a representative of an independent superintending or controlling firm.

(c) When the commodity enters the country of destination in bond, a statement by the importer will be acceptable which:

(1) Identifies the commodity as that exported under the financing agreement,

(2) States the quantity of the commodity entered under bond and date of entry into the destination country, and

(3) Certifies that the commodity will be withdrawn from bonded storage at a later date for consumption in the destination country.

(d) If the evidence of entry is in other than the English language, the exporter shall also provide an English translation thereof.

(e) Failure to furnish, within the time specified, evidence of entry of the commodity into the country of destination shall constitute prima facie evidence of failure to enter or to cause the entry of the commodity into such country as required. In such case, the financing agreement may be terminated by the Assistant Sales Manager, and if full payment under the bank obligation or account receivable has not yet been received, the bank obligation and the account receivable shall at the option of CCC, become due and payable and liquidated damages shall be payable in accordance with § 1488.11. The remedy herein provided shall not be exclusive of other rights available to the Federal government if the commodity enters a country other than that specified in the financing agreement.

DELIVERY REQUIREMENTS

§ 1488.11 Liquidated damages.

Failure of the exporter to export or cause to be exported, within the period provided therefor, any agricultural commodity financed, when delivery is made before export under the terms of the financing agreement, or failure of the exporter to enter or cause the entry of, such commodity into the country of destination, shall constitute a breach of the financing agreement which will result in serious and substantial damage to CCC and to its program. Since it will be difficult, if not impossible, to prove the exact amount of such damage, the exporter shall pay to CCC promptly on demand, as reasonable compensation and not as a penalty, liquidated damages in lieu of probable actual damages, as follows:

(a) For each day of delay in exportation after the final date for exportation, when delivery is made before export under the terms of the financing agreement, .15 percent of the amount financed under the financing agreement for the commodity not exported; (b) for failure to export or cause exportation, when delivery is made before export under the terms of the financing agreement, 5 percent of the amount financed under the financing agreement for the commodity not exported; (c) for failure, after exportation, to enter or cause the entry of the commodity into the country of destination, at the rate of 5 percent a year of the amount financed under the financing agreement for such commodity from the start of the financing period until payment to CCC of the amount financed; *Provided however*, That the aggregate of all amounts assessed under this § 1488.11 with respect to the same commodity shall not exceed 5 percent of the amount financed for such commodity. Liquidated damages shall not be assessed: Under paragraph (a) of this section if the Assistant Sales manager determines that the delay was due to such causes as acts of God or government or public enemy, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather; under paragraph (b) of this section if the Assistant Sales Manager determines that failure to export was due to loss, damage, destruction or deterioration of the commodity or act of God or government or public enemy; and under paragraph (c) of this section if the Assistant Sales Manager determines that failure to enter or cause the entry of the commodity into the country of destination was due to loss, damage, destruction or deterioration of the commodity or act of God or government or public enemy.

BANK OBLIGATIONS AND REPAYMENT

§ 1488.12 Coverage of bank obligations.

(a) U.S. banks and branch banks shall be liable without regard to risk (1) for payment of bank obligations issued by them or (2) for payment of bank obligations confirmed by them without regard to risk if a requirement for such confirmation is included in the financing agreement or (3) as provided in paragraphs (c) and (d) of this section.

(b) An obligation issued by a foreign bank must be confirmed and advised, as provided in paragraphs (a), (c), (d), (e), and (f) of this section, by a U.S. bank or a branch bank, or may be confirmed by an agency bank when determined by the President or Vice President, CCC after consultation with the Controller, CCC, to be in the interest of CCC.

(c) A U.S. bank must confirm the full amount of an obligation issued by its foreign branch. CCC will hold the U.S. bank liable for payment without regard to risks.

(d) If a branch bank confirms an obligation issued by its home office, or by another branch of its home office, it must confirm the full amount thereof. CCC will hold the branch bank liable for payment without regard to risks.

(e) If CCC accepts an agency bank confirmation of a foreign bank obligation, it must be for the full amount thereof without regard to risks and will be subject to such terms and conditions as may be contained in the financing agreement. CCC will not accept an agency bank confirmation of an obligation issued by its home office, or by a branch of its home office.

(f) Except as provided in paragraphs (a), (c), and (d) of this section, if a U.S. bank or a branch bank confirms an obligation issued by a foreign bank, it must confirm at least 10 percent pro rata and must advise the remainder of the foreign bank obligation. The percentage of confirmation shall be the same for both the account receivable and the interest portions of the obligation. For the confirmed amount, except as provided in paragraph (a)(2) of this section, CCC will hold the U.S. bank or branch bank liable for commercial risks but not for non-commercial risks. For the advised amount, CCC will not hold the U.S. bank or branch bank liable for commercial or non-commercial risks. CCC will hold the foreign bank liable without regard to risks for all amounts not recovered from the U.S. or branch bank.

(g) Under special circumstances, on application in writing, the Vice President, CCC, may reduce or waive requirements for 10 percent confirmation by a U.S. or branch bank, but a bank will not be relieved of any obligation it undertakes.

(h) Any bank obligation which provides for a bank acceptance of a time draft by CCC (banker's acceptance) shall not be acceptable to CCC.

(i) CCC will consent to cancellation or reduction of a bank obligation to the extent of any payment it receives from other sources or amounts otherwise payable under such bank obligation.

(j) Collection of accounts receivable purchased under GSM-5 will be effected through the issuance by CCC of sight drafts against the bank obligations, but this method of collection shall not be exclusive of any other collection procedures or rights available to CCC.

[42 FR 10999, Feb. 25, 1977, as amended at 42 FR 27569, May 31, 1977; 42 FR 30833, June 17, 1977; 43 FR 45551, Oct. 3, 1978; 44 FR 51187, Aug. 31, 1979]

§ 1488.13 CCC drafts.

CCC will draw one draft for each payment due under bank obligations. If any portion of a CCC draft is dishonored, the U.S. bank or branch bank shall return the dishonored draft together with its statement of the reason for nonpayment. If a draft which is drawn under a partially confirmed bank obligation is dishonored, CCC will replace the draft with separate drafts for the confirmed and unconfirmed portions at the request of the confirming bank. Such replacement shall not alter the confirming bank's obligation for timely payment to CCC of the confirmed portion of the credit. For confirmed amounts, except as provided in § 1488.12(a), (c) and (d), a U.S. or branch bank may request refund from CCC of the amount paid if it certifies to CCC that it is unable to recover funds from the foreign bank due to a stipulated non-commercial risk which existed on the date payment was made to CCC under the draft. If CCC finds that inability to recover funds was due to such a non-commercial risk, the refund shall be promptly made together with interest at the Federal Reserve Bank of New York discount rate from and including the date payment was originally made to CCC but not include the date of refund by CCC. For unconfirmed amounts, remittance to CCC shall be considered final, and the U.S. bank or branch bank shall not thereafter have recourse to CCC.

[42 FR 10999, Feb. 25, 1977, as amended at 42 FR 27569, May 21, 1977; 42 FR 30833, June 17, 1977]

§ 1488.14 Interest charges.

The account receivable assigned to CCC and the related bank obligation(s) shall bear interest as specified in this section. Rates of interest applicable to financing agreements shall be published in USDA announcement. The interest rate applicable to that portion of an account receivable for which payment is assured by a bank obligation issued or confirmed for all risks according to § 1488.12(a)(ii) or pro rata confirmed by a U.S. bank shall be lower than the interest rate applicable for the remainder of the account receivable. The interest rate applicable to that portion of an account receivable the payment of which is assured by a bank obligation issued or pro rata confirmed by a branch bank shall, when determined by the President or Vice President, CCC after consultation with the Controller, CCC, to be in the interest of CCC, be lower than the interest rate applicable for the remainder of the account receivable. The interest rates applicable to accounts receivable the payment of which is assured by an agency bank confirmation may, when determined by the President or Vice President, CCC, after consultation with the Controller, CCC, to be in the interest of CCC, be lower than the interest rate applicable for the remainder of the account receivable. The interest rate applicable will be the rate in effect on the date CCC receives the sale registration request under § 1488.4. Interest shall accrue on the account receivable from the date of delivery or the weighted average delivery date of the agricultural commodities delivered under the financing agreement to the date of payment, or to the date of expiration of the financing period, or to the date of expiration of the bank obligation, whichever occurs first, and shall be payable as specified in the financing agreement. Thereafter, interest shall accrue on any unpaid part of both the principal and interest due as of such expiration date.

[42 FR 10999, Feb. 25, 1977, as amended at 42 FR 27569, May 31, 1977]

§ 1488.15 Advance payment.

If, before expiration of the financing period, the exporter or the U.S. bank or the agency or branch bank accepts payment from or on behalf of the foreign importer of any part of the account receivable, it shall be remitted promptly to CCC. Such prepayment shall be applied first to interest on the unpaid balance of the account receivable to the date CCC receives such prepayment and then to the principal.

§ 1488.16 Liability for payment.

If delivery is made within the coverage of the bank obligation(s) submitted in accordance with § 1488.8, CCC will look to the obligating bank or banks and the foreign importer, rather than to the exporter or intervening purchaser, for payment of all amounts due at maturity of the account receivable and of the bank obligation(s), but the exporter and the intervening purchaser shall remain liable for any loss arising from breach of any contractual obligation, certification or warranty made by them pursuant to the financing agreement, and the exporter shall remain liable for any amounts not covered by the bank obligation which are owing to CCC, and any remittance or refund required by § 1488.15 and § 1488.18, together with interest thereon at the rate specified in the documents evidencing the account receivable, as well as for any liquidated damages provided for in § 1488.11. The liability of the bank and the importer under their respective obligations shall be several.

MISCELLANEOUS PROVISIONS

§ 1488.17 Assignment.

The exporter shall not assign any claim or rights or any amounts payable under the financing agreement, in whole or in part, without written approval of the Vice President, CCC, or the Controller, CCC.

§ 1488.18 Covenant against contingent fees.

The exporter warrants that no person or selling agency has been employed or retained to solicit or secure the financing agreement on an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the exporter for the purpose of securing business. For breach or violation of this warranty, CCC shall have the right, without limitation on any other rights it may have, to annul the financing agreement without liability to CCC. Should the financing agreement be annulled, CCC will promptly consent to the reduction or cancellation or related bank obligations except for amounts outstanding under a financing agreement. Such amounts shall, on demand, be refunded to CCC by the exporter.

§ 1488.19 [Reserved]

§ 1488.20 Officials not to benefit.

No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of the financing agreement or to any benefit that may arise therefrom, but this provision shall not be construed to extend to the financing agreement if made with a corporation for its general benefit.

§ 1488.21 Exporter's records and accounts.

CCC shall have access to and the right to examine any directly pertinent books, documents, papers and records of the exporter involving transactions related to the financed export credit sale until the expiration of three years after the end of the financing period.

§ 1488.22 Communications.

(a) Unless otherwise provided, written requests, notifications, or communications by the applicant pertaining to the financing agreement shall be addressed to the Assistant Sales Manager, Commercial Export Programs, Office of the General Sales Manager, U.S. Department of Agriculture, Washington, DC 20250.

§ 1488.23 OMB Control Numbers assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in these regulations (7 CFR Part 1488) have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0551-0021.

[Amdt. 8, 50 FR 13967, Apr. 9, 1985]

PART 1489—TERMS AND CONDITIONS FOR PURCHASE OF TOBACCO UNDER COMMODITY CREDIT CORPORATION EXPORT CREDIT SALES PROGRAM

Sec.
1489.1 General statement.
1489.2 Associations through which tobacco may be purchased.
1489.3 Purchase of tobacco.
1489.4 Export requirements for tobacco purchased.
1489.5 Failure to perform.

APPENDIX—NOTICE TO EXPORTERS

AUTHORITY: Secs. 4, 5, 62 Stat. 1070, as amended; 15 U.S.C. 714b, 714c.

SOURCE: Announcement PR TB-2, 30 FR 12067, Sept. 22, 1965, unless otherwise noted.

§ 1489.1 General statement.

Price support on tobacco is made available to producers through loans made by Commodity Credit Corporation (hereinafter referred to as "CCC") to producer-owned and controlled associations (hereinafter referred to as "the associations"). Tobacco which the associations receive from producers and pledge to CCC as loan collateral is processed, stored and sold by the associations in accordance with usual trade practices. Sales proceeds are applied to repay the loan from CCC. Information on inventories, prices, and other terms and conditions of sale is issued and distributed by the associations, and will be furnished by the associations to any interested person upon request. This part sets forth the additional terms and conditions applicable to purchases of tobacco under the CCC Export Credit Sales Program (GSM-3, Rev. II) set out at 31 FR 2997 and any revisions thereof.

[30 FR 12067, Sept. 22, 1965, as amended by Amdt. 1, 31 FR 11013, Aug. 19, 1966]

§ 1489.2 Associations through which tobacco may be purchased.

The kind of tobacco handled by each of the associations and the names and addresses of the associations through which tobacco may be purchased are as follows:

Kind	*Association*
Flue-Cured Tobacco	Flue-Cured Tobacco Cooperative Stabilization Corp., Post Office Box 2718, Raleigh, N.C.
Burley Tobacco	Burley Tobacco Growers Cooperative Association, Post Office Box 860, Lexington, Ky.; Virginia Burley Tobacco Growers Association, Inc., Post Office Box 549, Abingdon, Va.; Burley Stabilization Corp., 3919 Holston Drive NE., Knoxville, Tenn.

Kind	Association
Dark-Fired and Dark Air Cured Tobacco.	Eastern Dark-Fired Tobacco and Dark Growers Association, 1109–11 South Main St., Springfield, Tenn.; Stemming District Tobacco Association, 125 First St., Henderson, Ky.; Western Dark-Fired Tobacco Growers Association, 202–206 East Maple St., Murray, Ky.; Dark Tobacco Sales Cooperative, Post Office Box 301, Farmville, Va.
Cigar Filler and Binder Tobacco.	Cigar Tobacco Cooperative, Post Office Box 23, Arcanum, Ohio; Conn-Mass Tobacco Cooperative, Inc., Post Office Box 550, Holyoke, Mass.; Northern Wisconsin Cooperative Tobacco Pool, Inc., Viroqua, Wis.; Wisconsin Cooperative Tobacco Growers Association, 28 West Fulton St., Edgerton, Wis.
Maryland Tobacco	Maryland Tobacco Cooperative, Inc., Post Office Box 368, Upper Marlboro, Md.

§ 1489.3 Purchase of tobacco.

(a) Upon issuance of a credit approval to a purchaser of tobacco (hereinafter referred to as "the exporter"), CCC will notify the appropriate association of the credit approval number, name of approved exporter, amount of approval, and other pertinent information.

(b) The exporter should arrange with the appropriate association for the selection and acquisition of the tobacco to be purchased. Selection may be made from any stocks pledged to CCC which the association has available for sale. To the extent that export requirements for the tobacco purchased are to be met by exporting cigarettes, the tobacco purchased shall be flue-cured, burley and Maryland tobaccos, in the following proportions: 58 to 63 percent flue-cured, 36 to 40 percent burley, and 1 to 2 percent Maryland. If less than an entire hogshead of any of the types of tobacco is needed to attain such percentages, the exporter shall make direct payment to the association for the remaining part of each such hogshead, and that part shall not be deemed to be purchased under the credit arrangement.

(c) The association shall invoice the selected tobacco to the exporter at the association's price and in accordance with all other usual sale arrangements of the association. The exporter shall submit a copy of the invoice, accompanied by the bank obligation prescribed by the credit arrangement, to Fiscal Division, ASCS, U.S. Department of Agriculture, Washington, DC, 20250. Upon receipt of a copy of the invoice and an acceptable bank obligation, CCC will credit the amount of the association's sales price to the appropriate loan account of the association. CCC shall promptly notify the association of the credit to the loan account.

§ 1489.4 Export requirements for tobacco purchased.

(a) Within 90 calendar days from the date of the invoice or such extension of time as may be approved by CCC for good cause, the exporter shall cause exportation to the destination specified in the proportions stated in § 1489.3, purchased under the credit arrangement or the equivalent of such quantity as determined under paragraph (c) of this section, of the same kind of tobacco: *Provided*, That, if the tobacco purchased under the credit arrangement is flue-cured, burley and Maryland tobaccos in the proportions stated in § 1489.3, the exporter's obligation to export the tobacco purchased or an equivalent quantity of the same kind of tobacco may be met by exporting a quantity of cigarettes whose value at the rate of $2.25 per thousand for nonfilter brand cigarettes (including all-tobacco tipped standard brands) and $1.75 per thousand for filter and "economy" brands equals or exceeds the invoice value of the tobacco purchased under the credit arrangement.

(b) The exporter shall within 30 calendar days after exportation furnish to the Fiscal Controls Branch, Fiscal Division, ASCS, U.S. Department of Agriculture, Washington, DC, 20250, proof of exportation which shall consist of:

(1) In the case of exportation by water, a nonnegotiable copy, certified as true and correct by the exporter or other person who exported the tobacco or cigarettes, of an onboard ocean bill of lading showing the number of containers of tobacco or cigarettes, the gross (or net) weight of such contain-

ers, the date and place of loading on board vessel, name of vessel, the name of the person who exported the tobacco or cigarettes, and the consignee and destination.

(2) In the case of exportation by rail or truck, a copy of the bill of lading under which the tobacco or cigarettes were shipped, together with (i) an authenticated landing certificate issued by an official of the Government of the country to which the tobacco or cigarettes were exported, or (ii) a copy of Shipper's Export Declaration authenticated by the appropriate U.S. Customs official. The bill of lading and supporting export form (landing certificate or Shipper's Export Declaration) must apply to the same shipment of tobacco or cigarettes, and such forms, or properly authenticated attachments, must show the number of hogsheads of tobacco or containers of cigarettes, the gross (or net) weight of such hogsheads or containers, the date and place of entry into the country of destination, and the name and address of both the person who exported the tobacco or cigarettes and the person to whom they were shipped.

(3) Where exportation is effected by other than the exporter, certification on the bill of lading, signed by such other person and the exporter, that such exportation was caused by the exporter pursuant to this part.

(4) Where exportation or transshipment of tobacco has been made or caused to be made by the exporter to one or more of the countries or areas for which an export license is required by the Bureau of International Commerce, U.S. Department of Commerce, the license issued for such movement by such agency shall be identified in the bill of lading, by license number.

(5) A statement, certified by the exporter, showing information as to the kind or type, form, and quantity of the tobacco purchased under the credit arrangement, and of the tobacco or cigarettes exported, as follows:

(i) The kind or type of tobacco exported,

(ii) If the tobacco exported is stemmed tobacco, whether it was purchased in that form,

(iii) If stemmed tobacco was purchased and substitute stemmed tobacco exported, the quantity of each kind or type of unstemmed leaf tobacco, packed-weight basis, that is contained in the stemmed tobacco exported, with the quantities of unstemmed tobacco converted to a stemmed leaf equivalent by dividing the unstemmed quantities by the factor 1.29 for flue-cured and 1.35 for other kinds of tobacco,

(iv) If unstemmed leaf tobacco was purchased and stemmed tobacco exported, the quantity of each kind or type of unstemmed leaf, packed-weight basis, that is contained in the stemmed leaf exported,

(v) If cigarettes are exported, the brand name of the product, whether filter or nonfilter tip and the computations made in determining the amount (value) to be applied against the invoice value of the tobacco purchased.

(6) Such other proof of exportation as may be required by CCC.

(c) The quantity of tobacco exported shall be considered equivalent to the quantity of tobacco purchased (and required to be exported), if the weights of the tobacco exported (as shown by the proof of exportation) correspond to the weights of the tobacco purchased in the following manner:

(1) If unstemmed leaf was purchased and unstemmed leaf exported, the gross or net weights of the tobacco exported must equal or exceed the gross or net weight of the tobacco purchased.

(2) If unstemmed leaf tobacco was purchased and stemmed tobacco exported, the quantity of unstemmed leaf tobacco used in the stemmed tobacco exported must equal or exceed the quantity purchased.

(3) If stemmed tobacco was purchased and substitute stemmed tobacco exported the quantity of unstemmed leaf tobacco used in the stemmed tobacco exported, divided by the factor 1.29 for flue-cured and 1.35 for other kinds of tobacco, must equal or exceed the net weight of the stemmed tobacco purchased.

(4) If stemmed tobacco was purchased and unstemmed leaf tobacco exported, the quantity exported divided by the factor 1.29 for flue-cured and 1.35 for other kinds of tobacco

must equal or exceed the net weight of the stemmed tobacco purchased.

(d) The proof of exportation furnished under this part shall not have been used, and shall not subsequently be used, as evidence of exportation under any other CCC or Department of Agriculture export program except to the extent that such proof is in excess of that needed to satisfy the export requirements of this part: *Provided, however,* That this limitation on the use of the proof of exportation shall not apply to the program providing for payments on export of certain kinds of tobacco set out at 31 FR 6862, 7556, and 9208 and any amendments thereof or supplements thereto.

(e) By submitting documents evidencing exportation the exporter represents and warrants that the commodity covered by such documents was not exported to, and has not and will not be transshipped or caused to be transshipped by the exporter to, any country or area for which an export license is required under the regulations issued by the Bureau of International Commerce, U.S. Department of Commerce, unless a license for such exportation or transshipment thereto has been obtained from such Bureau.[1]

[30 FR 12067, Sept. 22, 1965, as amended by Amdt. 1, 31 FR 11013, Aug. 19, 1966]

§ 1489.5 Failure to perform.

The exporter agrees to export tobacco or cigarettes as required by this part within the time specified herein, or to pay liquidated damages as herein provided. Failure to furnish proof of exportation within 30 calendar days after 90 calendar days after the date of the invoice or any extended period approved by CCC shall be prima facie evidence of failure to export. Failure of the exporter to export tobacco or cigarettes within the time required under this part will result in damage to CCC's export and price support programs. Since it will be difficult, if not impossible, to prove the exact amount of such damage, the exporter shall pay to CCC liquidated damages as follows: (a) Where the export requirements for tobacco are not met, for each day of delay in exportation, one-sixth of one percent of a base amount determined by multiplying the number of pounds by which the export requirements for tobacco are not met by the average invoice price per pound of the tobacco acquired from the association, or (b) where the export requirements for cigarettes are not met, for each day of delay in exportation, one-sixth of one percent of a base amount equal to the amount by which the value of the cigarettes exported, as determined under § 1489.4, fails to equal the invoice value of the tobacco bought under the credit arrangement: *Provided,* That in the case of either paragraph (a) or (b) of this section the total amount of liquidated damages assessed shall not exceed ten percent of the base amount: *And provided, further,* That no liquidated damages shall be assessed if CCC determines that failure to export or delay in exportation was due solely to causes without the fault or negligence of the exporter. In acquiring tobacco under a credit arrangement, the exporter agrees that these rates are a reasonable estimate of probable actual damages that would be incurred by CCC by reason of failure to export in accordance with this part.

APPENDIX—NOTICE TO EXPORTERS

The Department of Commerce, Bureau of International Commerce, pursuant to regulations under the Export Control Act of 1949, prohibits the exportation or re-exportation by anyone of any commodities under this program to Cuba, the Soviet Bloc or Communist-controlled areas of the Far East, including Communist China, North Korea, and the Communist-controlled area of Vietnam, except under validated license issued by the U.S. Department of Commerce, Bureau of International Commerce.

For all exportations, one of the destination control statements specified in Commerce Department Regulations (Comprehensive Export Schedule § 379.10(c)) is required to be placed on all copies of the shipper's export declaration, all copies of the bill of lading, and all copies of the commercial invoices. For additional information as to which destination control statement to use, the exporter should communicate with the Bureau of International Commerce or one of the field offices of the Department of Commerce.

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[1] Information to exporters: The Department of Commerce Regulations prohibit exportation or reexportation by anyone, including a foreign exporter, of the commodity exported pursuant to the terms of these regulations, to prohibited countries and areas. The attention of the exporter is invited to the "Notice to Exporters" which accompanies these regulations.

Exporters should consult the applicable Commerce Department regulations for more detailed information, if desired, and for any changes that may be made therein.

PART 1491—CCC INTERMEDIATE CREDIT EXPORT SALES PROGRAM FOR BREEDING ANIMALS

Subpart A—Financing of Export Sales of Breeding Animals (GSM-201)

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AUTHORITY: Sec. 4(b), 80 Stat. 1537, as added by sec. 101, 92 Stat. 1685 (7 U.S.C. 1707a(b)); sec. 5(f), 62 Stat. 1070, as amended (15 U.S.C. 714c).

Subpart A—Financing of Export Sales of Breeding Animals (GSM-201)

SOURCE: 44 FR 49419, Aug. 23, 1979, unless otherwise noted.

GENERAL

§ 1491.1 General statement.

(a) This subpart contains the regulations governing the Commodity Credit Corporation's Intermediate Credit Program for financing the export sales of breeding animals (GSM-201).

(b) The financing period shall be in excess of three years but not more than ten years.

(c) Subject to the terms and conditions set forth in this Subpart A, CCC will purchase for cash the exporter's account receivable arising from the export sale, after delivery of the breeding animals.

(d) GSM-201 will be administered by the Office of the General Sales Manager, U.S. Department of Agriculture.

(e) The provisions of Pub. L. 83-664 (Cargo Preference Act) are not applicable to shipments of breeding animals financed under GSM-201.

(f) CCC may require an initial payment from the foreign importer prior to delivery of the breeding animals.

(g) Payment to CCC shall be in dollars with interest equal, as nearly as practicable, to the rate charged by CCC for Financing under CCC's short term Export Credit Sales Program.

§ 1491.2 Definition of terms.

As used in this Subpart A and in the forms and documents related thereto, the following terms shall have the meanings assigned to them in this section:

(a) "Account receivable" means the contractual obligation of the foreign importer to the exporter for the export value of the breeding animals delivered for which the exporter is extending credit to the importer. The account receivable shall be evidenced by documents, in form and substance satisfactory to CCC, establishing the contractual obligation between the exporter and the foreign importer. The account receivable shall provide for:

(1) payment of principal and interest in U.S. dollars in the United States,

(2) Interest in accordance with § 1491.14 and

(3) Acceleration of payment thereunder in accordance with these regulations.

(b) "Agency or branch bank" means an agency or branch of a foreign bank, supervised by New York State banking authorities or the banking authorities of any other State providing similar supervision, and approved by the Controller, CCC.

(c) "Assistant Sales Manager" means the Assistant Sales Manager, Commercial Export Programs, Office of the General Sales Manager, U.S.D.A., or his designee.

(d) "Bank obligation" means an obligation, in accordance with § 1491.12, and acceptable to CCC, of a U.S. bank, a branch bank, or a foreign bank, to pay to CCC in U.S. dollars the amount of the account receivable, plus interest in accordance with § 1491.14.

(e) "Breeding animals" means U.S. breeding animals, including, but not limited to, cattle, swine, sheep, and poultry.

(f) "CCC" means the Commodity Credit Corporation, U.S. Department of Agriculture.

(g) "Date of delivery" means the onboard date of an ocean bill of lading, or the date of an airway bill, or if exported by rail or truck, the date of entry shown on an authenticated landing certificate or similar document issued by an official of the government of the importing country.

(h) "Date of sale" means the earliest date the exporter has knowledge that a contractual obligation exists with the foreign buyer under which a firm dollar and cent price has been established or a mechanism to establish the price has been agreed upon.

(i) "Eligible destination" means the country which is named in the financing agreement and which meets the licensing requirements of the U.S. Department of Commerce.

(j) "Eligible exporter" or "exporter" means a person (1) who is engaged in the business of buying or selling breeding animals and for this purpose maintains a bona fide business office in the United States, its territories or possessions, and has someone on whom service of judicial process may be had within the United States, (2) who is financially responsible, and (3) who is not suspended or debarred from contracting or participating in any program financed by CCC on the date of issuance of the financing agreement.

(k) "Export value" means the net amount of the exporter's sale price to be financed under the financing under the financing agreement basis f.o.b. export carrier U.S. ports, at U.S. border points of exit, or at U.S. airports if shipped by air, less any payments made to the exporter, and less any discounts, credits or allowances by the exporter. Export value may include freight cost. The export value shall not include marine and war risk insurance for c.i.f. sales.

(l) "Financing agreement" means the exporter's request for a sale registration as approved by the Assistant Sales Manager, and the terms and conditions of the regulations in this subpart in effect on the date of approval.

(m) "Financing period" means the number of years and months over which paymnent is to be made which shall be in excess of three years but not more than ten years. Such period shall start on the date of delivery or the weighted average delivery date of the breeding animals to be exported under the financing agreement and shall expire on the expiration of the bank obligation or the specified period over which payment is to be made, whichever occurs first.

(n) "Foreign bank" means a bank which is not a U.S. bank or agency or branch bank, but includes a foreign branch of a U.S. bank.

(o) "Foreign importer" or "importer" means the buyer who purchases the breeding animals to be exported under a financing agreement.

(p) "Freight cost" means the cost of freight from United States points of export to designated points of entry in the country shown in the financing agreement.

(q) "GSM-201" means the regulations contained in this Subpart A, and supplements thereto, setting forth the terms and conditions governing the CCC Intermediate Credit Export Sales Program For Breeding Animals.

(r) "OGSM" means the Offfice of the General Sales Manager, U.S. Department of Agriculture.

(s) "Point of export" means the U.S. port, U.S. airport, or U.S. border point where the breeding animals are inspected by the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture and exported from the United States.

(t) "Port value" means the net amount of the exporter's sale price of the breeding animals, basis f.o.b. export carrier at U.S. ports, at U.S. border points of exit, or at U.S. airports, if shipped by air.

(u) "Producer" means the person holding legal title to the breeding animal at time of birth and who has had continuous ownership of such animal until sold for export under an approved financing agreement.

(v) "Sale" means a contract to sell on credit breeding animals to be financed under GSM-201.

(w) "United States" means the 50 States, the District of Columbia, and Puerto Rico.

(x) "U.S. bank" means a bank organized under the laws of the United States, a State, or the District of Columbia.

(y) "USDA announcement" means an announcement published by the U.S. Department of Agriculture (USDA).

(z) "Vice President, CCC" means the Vice President who is the General Sales Manager, Office of the General Sales Manager.

FINANCING EXPORT SALES

§ 1491.3 General.

(a) No export sale may be financed under this subpart unless the Assistant Sales Manager determines that the sale will: develop, expand, or maintain the importing nation as a foreign market, on a long-term basis, for the commercial sale and export of U.S. agricultural commodities without displacing normal U.S. commercial sales or improve the capability of the importing nation to purchase and use, on a long-term basis, U.S. agricultural commodities.

(b) Financing under this subpart may not be used to encourage credit competition or for the purpose of foreign aid or debt rescheduling.

§ 1491.4 Submission of requests for sale registrations.

(a) An eligible exporter shall submit a request for a sale registration for financing to the office specified in § 1491.21.

(b) Requests for sale registrations shall be in writing. If such a request is made by telephone, it must be confirmed by letter or wire.

(c) The total amount requested to be registered under a sale shall not exceed the export value of the sale.

(d) Requests for sale registration shall incorporate by reference all terms and conditions of GSM-201.

(e) The following information shall be included in the exporter's request for a sale registration:

(1) The name, class, grade, or quality of the breeding animals as required by the applicable supplements to these regulations, and the number of breeding animals to be exported.

(2) The country of destination.

(3) The port value of the breeding animals to be exported.

(4) The freight cost if sale is made c&f or c.i.f. basis.

(5) The export value.

(6) The date of sale and exporter's sale number.

(7) The date of delivery or period for delivery.

(8) The financing period.

(9) Whether the bank obligation assuring payment of the account receivable will be issued by a U.S. bank, branch bank, or foreign bank. If it will be issued by a foreign bank, its name and address.

(10) The name and address of the foreign importer.

(11) Any additional information required by the applicable supplements to these regulations and as determined by CCC.

§ 1491.5 Acceptance of sale registrations.

(a) Upon receiving a request for a sale registration complying with the applicable provisions of this subpart, the Assistant Sales Manager shall determine whether the request for registration of the sale shall be approved.

If approved, the exporter will be notified in writing of the financing agreement number which will constitute notice that the sale is registered and eligible for financing.

(b) CCC reserves the right to reject any and all requests for sale registration.

(c) The approved registration of a sale shall create a financing agreement between the exporter and CCC which shall consist of the exporter's request for the sale registration, the approved sale registration, and the applicable terms and conditions of this subpart, including amendments and supplemental announcements and supplements hereunder, which are in effect on the date of approval of the sale registration.

(d) The financing agreement may contain such terms and conditions not inconsistent with this subpart, as are deemed necessary in the interest of CCC and shall be subject only to review by the National Advisory Council on International Monetary and Financial Policies.

(e) An exporter shall promptly notify the Assistant Sales Manager when he is unable to fulfill his obligations under any sale registered with CCC.

§ 1491.6 Amendments to financing agreement.

The financing agreement may be amended provided such amendment is in conformity with GSM-201 at the time of amendment and is determined to be in the interest of CCC. Amendments may include extension of the period for delivery and change in the interest rate.

§ 1491.7 Expiration of period(s) for delivery.

(a) Unless delivery by the exporter to the importer is made within such period as may be provided in the financing agreement or any amendment thereof, or under paragraph (b) of this section, the financing agreement will no longer be valid.

(b) If the Assistant Sales Manager determines that delay in delivery was due solely to causes without the fault or negligence of the exporter, the period for delivery may be extended by the Assistant Sales Manager by the period of such delay.

DOCUMENTS REQUIRED FOR FINANCING

§ 1491.8 Documents required after delivery.

(a) CCC will purchase an exporter's account receivable only if the documents specified in paragraphs (b) through (e) of this section and any documentation and certifications required by any supplements to these regulations are received by CCC at the office specified in § 1491.21 (b) within forty-five days, or any extension thereof granted by the Treasurer or Assistant Treasurer, CCC, after date of delivery of the breeding animals.

(b) The exporter shall submit a "Combined Application for Disbursement, Assignment of Account Receivable and Certification" which shall include:

(1) A written application for disbursement, showing with respect to breeding animals delivered (i) the financing agreement number, (ii) the port value to be financed, and (iii) the freight cost if sale is made c&f or c.i.f. basis.

(2) An assignment of the account receivable arising from the export sale, in form and substance acceptable to CCC.

(3) The exporter's certification that (i) he has entered into a contract to sell breeding animals; (ii) the date of sale, the agreed upon price, the class, grade, quality, quantity of the breeding animals, and the payment terms and interest are in accordance with the financing agreement; (iii) he has in his files documents evidencing the export sale contract and the obligation of the importer to him for the financed portion of the export sale and will retain and furnish them to CCC on demand until 3 years after the end of the financing period; (iv) breeding animals of the class, grade, quality, and quantity called for in the exporter's sale as registered with CCC have been delivered to the foreign importer; and (v) he knows of no defenses to the account receivable assigned to CCC.

(c) A copy of the sales invoice to the foreign importer showing (1) the port value of the breeding animals and (2) freight cost if sale is made c&f or c.i.f. basis.

(d) A copy of the document evidencing export provided for in § 1491.9 and, if the consignee is other than the foreign importer named in the financing agreement, such additional information as CCC may request to show that export was made in accordance with the instructions of, or the export sale contract with, the foreign importer.

(e) A bank obligation or bank obligations in accordance with § 1491.12 and paragraph (h) of this section, naming CCC as beneficiary, in form and substance acceptable to CCC, covering the amount of the application for disbursement, citing the financing agreement number, and providing for the payment of interest in accordance with § 1491.14.

(f) On receipt of the documents described in paragraphs (b) through (e) of this section and any documentation and certifications required by any supplements to these regulations, CCC will pay promptly to the exporter the amount of the account receivable or the dollar amount of sales registered in accordance with § 1491.5, whichever is the lesser.

(g) If an acceptable application for disbursement and the supporting documents described in paragraphs (b) through (e) of this section have not been received by CCC within 45 days from the date of the delivery, or any extension thereof granted by the Treasurer or Assistant Treasurer, CCC, the financing agreement shall be void.

(h) If for any reason a draft drawn under a foreign bank obligation is dishonored or if the issuing bank is insolvent, in bankruptcy, in receivership or in liquidation, or has made an assignment for the benefit of creditors, or for any other reason discontinues or suspends payments to depositors or creditors, or otherwise ceases to operate on an unrestricted basis, any balance due on the account receivable assured by the obligation issued by such bank shall, at the option of CCC, become immediately due and payable. CCC may permit the substitution of another acceptable foreign bank obligation covering such balance due if advised in accordance with § 1491.12.

(Approved by the Office of Management and Budget under control number 0551-0012)

[44 FR 49419, Aug. 23, 1979, as amended at 47 FR 746, Jan. 7, 1982]

§ 1491.9 Evidence of export.

(a) If the breeding animals are exported by rail or truck, the exporter shall furnish to CCC one copy of the bill of lading covering the breeding animals exported, certified by the exporter as being a true copy, and an authenticated landing certificate or similar document issued by an official of the government of the country to which the breeding animals are exported, showing the quantity, the place and date of entry, and the name and address of both the exporter and the importer.

(b) If the breeding animals are exported by ocean carrier, the exporter shall furnish to CCC one non-negotiable copy or photo copy or other duplicate copy of either (1) an on-board ocean bill of lading or (2) an ocean bill of lading with an onboard endorsement, dated and signed or initialed on behalf of the carrier. The bill of lading must be certified by the exporter as being a true copy and must show the quantity, the date and place of loading of the breeding animals, the name of the vessel, the destination of the breeding animals and the name and address of both the exporter and the importer.

(c) If the breeding animals are exported by aircraft, the exporter shall furnish to CCC one non-negotiable copy of an airway bill, dated and signed or initialed on behalf of the carrier. The airway bill must be certified by the exporter as being a true copy and must show the quantity, date and place of loading of the breeding animals, the name of the airline, the destination of the breeding animals and the name and address of both the exporter and the importer.

(d) If the exporter is unable to supply documentary evidence of export as specified in this section, he shall submit such other documentary evidence as may be acceptable to CCC.

ENTRY INTO COUNTRY OF DESTINATION

§ 1491.10 Failure to enter.

If the exporter fails to enter or cause the entry of the breeding animals into the country of destination, the financing agreement may be terminated by the Assistant Sales Manager, and if full payment under the bank obligation or account receivable has not yet been received, the bank obligation and the account receivable shall, at the option of CCC, become due and payable and liquidated damages shall be payable in accordance with § 1491.11. The remedy herein provided shall not be exclusive of other rights available to the Federal Government.

§ 1491.11 Liquidated damages.

Failure of the exporter to enter or cause the entry of breeding animals financed under GSM-201 into the country of destination shall constitute a breach of the financing agreement which will result in serious and substantial damage to CCC and to its program. Since it will be difficult, if not impossible, to prove the exact amount of such damage, the exporter shall pay to CCC promptly on demand, as reasonable compensation and not as a penalty, liquidated damages in lieu of probable actual damages for failure to enter or cause the entry of the breeding animals into the country of destination, 5 percent of the amount financed for the breeding animals not entered into the country of the destination. Liquidated damages shall not be assessed if the Assistant Sales Manager determines that failure to enter or cause the entry of the breeding animals into the country of destination was due to loss or injury of the breeding animals without fault or negligence on the part of the exporter, or due to act of God or government or public enemy.

BANK OBLIGATIONS AND PAYMENT

§ 1491.12 Coverage of bank obligations.

(a) The bank obligation shall be in the form of an irrevocable letter of credit issued by a U.S. bank, a branch bank, or a foreign bank. CCC will not accept any bank obligation issued by an agency bank. If the bank obligation is issued by a foreign bank, the bank obligation must be advised by a U.S. bank, a branch bank, or an agency bank.

(b) The bank obligation shall provide for payment under the terms and conditions of the financing agreement.

(c) Any bank obligation which provides for a bank acceptance of a time draft by CCC (banker's acceptance) shall not be acceptable to CCC.

(d) CCC will consent to cancellation or reduction of a bank obligation to the extent of any payment it receives from other sources of amounts otherwise payable under such bank obligation.

(e) Collection of purchased accounts receivable will be effected through the issuance by CCC of sight drafts against the bank obligations, but this method of collection shall not be exclusive of any other collection procedures or rights available to CCC.

§ 1491.13 CCC drafts.

CCC will draw one draft for each payment due under bank obligations. If the draft is dishonored, the U.S. bank, branch bank, or agency bank shall return the dishonored draft together with its statement of the reason for nonpayment.

§ 1491.14 Interest charges.

The account receivable purchased by CCC and the related bank obligation(s) shall bear interest as specified in this section. Rates of interest applicable to financing agreements shall be set forth in a USDA announcement. The interest rate applicable for an account receivable covered by a bank obligation issued by a U.S. bank or branch bank shall be lower than the interest rate for an account receivable covered by a foreign bank obligation. The interest rate applicable will be the rate in effect on the date CCC receives the sale registration request under § 1491.4. Interest shall accrue on the account receivable from the date of delivery or the weighted average delivery date of the breeding animals delivered under the financing agreement to the date of payment, or to the date of expiration of the financing period, or to the date of expiration of the bank obligation, whichever occurs first, and shall be payable as specified in the financing agreement. Thereafter, interest shall accrue on any unpaid part of both the principal and interest due as of such expiration date.

§ 1491.15 Advance payment.

If, before expiration of the financing period, the exporter or the U.S. bank or the agency or branch bank accepts payment from or on behalf of the foreign importer of any part of the account receivable, it shall be remitted promptly to CCC. Such prepayment shall be applied first to interest on the unpaid balance of the account receivable to the date CCC receives such prepayment and then to the principal.

§ 1491.16 Liability for payment.

If the exporter has fulfilled all his obligations under the sales contract within the coverage of the bank obligation(s) submitted in accordance with § 1491.8, CCC will look to the obligating bank or banks and the foreign importer, rather than to the exporter for payment of all amounts due at maturity of the account receivable and of the bank obligation(s) but the exporter shall remain liable for any loss arising from breach of any contractual obligation, certification or warranty made by it pursuant to the financing agreement, any amounts not covered by the bank obligation which are owing to CCC, and any remittance or refund required by § 1491.15 and § 1491.18, together with interest thereon at the rate specified in the documents evidencing the account receivable, as well as for any liquidated damages provided for in § 1491.11. The liability of the bank and the importer under their respective obligations shall be several.

MISCELLANEOUS PROVISIONS

§ 1491.17 Assignment.

The exporter shall not assign any claim or rights or any amounts payable under the financing agreement, in whole or in part, without written approval of the Vice President, CCC, or the Controller, CCC.

§ 1491.18 Covenant against contingent fees.

The exporter warrants that no person or selling agency has been employed or retained to solicit or secure the financing agreement on an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commerical or selling agencies maintained by the exporter for the purpose of securing business. For breach or violation of this warranty, CCC shall have the right, without limitation on any other rights it may have, to cancel the financing agreement without liability to CCC. Should the financing agreement be cancelled, CCC will promptly consent to the reduction or cancellation of related bank obligations except for amounts outstanding under such financing agreement. Such amounts shall, on demand, be refunded to CCC by the exporter.

§ 1491.19 Officials not to benefit.

No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of the financing agreement or to any benefit that may arise therefrom, but this provision shall not be construed to extend to the financing agreement if made with a corporation for its general benefit.

§ 1491.20 Exporter's records and accounts.

CCC shall have access to and the right to examine any directly pertinent books, documents, papers and records of the exporter involving transactions related to the financed export credit sale until the expiration of three years after the end of the financing period.

§ 1491.21 Communications.

(a) Unless otherwise provided, written requests, notifications, or communications by the applicant pertaining to the financing agreement shall be addressed to the Assistant Sales Manager, Commercial Export Programs, Office of the General Sales Manager, U.S. Department of Agriculture, Washington, DC 20250.

(b) Forward documents for financing to:

United States Department of Agriculture,
Commodity Credit Corporation, P.O. Box
2415, Washington, DC 20013.

§ 1491.22 OMB Control Number assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in this regulation (7 CFR Part 1491) have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0551-0012.

[Amdt. 1, 50 FR 13968, Apr. 9, 1985]

PART 1492—CCC INTERMEDIATE CREDIT EXPORT SALES PROGRAM FOR FOREIGN MARKET DEVELOPMENT FACILITIES

Subpart A—Financing Export Sales of Agricultural Commodities Under CCC Intermediate Credit Export Sales Program (GSM-301)

GENERAL

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1492.43 Communications.

AUTHORITY: Sec. 4(b), 80 Stat. 1537, as added by sec. 101, 92 Stat. 1685 (7 U.S.C. 1707a); sec. 5(F), 62 Stat. 1070, as amended.

Subpart A—Financing Export Sales of Agricultural Commodities Under CCC Intermediate Credit Export Sales Program (GSM-301)

SOURCE: 45 FR 64885, Oct. 1, 1980, unless otherwise noted.

GENERAL

§ 1492.1 General statement.

(a) Section 4(b) of the Food for Peace Act of 1966, as added by the Agricultural Trade Act of 1978, authorizes the Commodity Credit Corporation (CCC) to finance export sales of United States agricultural commodities out of CCC and private stocks on credit terms in excess of three years but not more than ten years.

(b) Intermediate credit financing made available by CCC on the export sale of United States agricultural commodities may be used to establish facilities in the importing country to improve handling, marketing, processing, storage, or distribution of imported agricultural commodities through the use of local currency generated from the import and sale of the U.S. agricultural commodities to finance the development of such facilities.

(c) No export sale may be financed unless the General Sales Manager determines that the sale will:

(1) Develop or expand the importing nation as a foreign market, on a long term basis, for the commercial sale and export of U.S. agricultural commodities without displacing normal U.S. commercial sales; or

(2) Otherwise improve the capability of the importing country to purchase and use on a long term basis, U.S. agricultural commodities.

(d) Intermediate credit financing may not be used for projects for which financing is available under other U.S. programs, such as programs administered by the Overseas Private Investment Corporation and the Export-Import Bank. However, financing provided by such institutions may be supplemented to the extent the General Sales Manager determines that such supplementation is necessary to accomplish the objectives of this program.

(e) Intermediate credit financing may not be used to encourage credit competition or for the purpose of foreign aid or debt rescheduling.

(f) The terms of credit for export sales financed shall include the following conditions:

(1) Repayment of financing shall be made in U.S. dollars and shall bear interest for the period of the financing. The interest rate shall be specified in the project agreement and shall apply to export sales made during a designated period of time. Interest rates will be determined by CCC using generally the same criteria as used in determining interest rates charged under CCC's short-term Export Credit Sales Program.

(2) The participant shall be required to make an initial payment of at least 15 percent of the export value of the agricultural commodity at the time of export of the commodity unless the General Sales Manager determines that a lower initial payment is appropriate.

(3) When deemed appropriate to protect the interests of CCC, the participant shall also be required to make a further investment in the project. Such investment may include providing initial working capital or the payment of feasibility and engineering studies, organizational expenses, land cost, construction cost, machinery and equipment cost, etc., with the participant's own resources.

(g) CCC shall, when deemed appropriate, obtain commitments from participants that the products produced in facilities covered by the project agreement will not be exported from the importing country if such products compete with the same or similar product being exported from the United States.

(h) Subject to the terms and conditions as set forth in GSM-301, CCC will purchase, after export of the commodity, the exporter's account receivable arising from an export sale of U.S. agricultural commodities.

(i) The provisions of Pub. L. 83-664 (Cargo Preference Act) shall not apply to exports of U.S. agricultural commodities financed under GSM-301.

(j) Participation under GSM-301 will not be conditioned upon the participant's use of U.S. goods and services to establish the facilities except that only U.S. agricultural commodities will be financed under the program.

(k) The GSM-301 program will be administered by the General Sales Manager, Foreign Agricultural Service, U.S. Department of Agriculture.

§ 1492.2 Definition of terms.

As used in this GSM-301, the project agreement, USDA announcements, and the forms and documents related thereto, the following terms shall have the meanings assigned to them in this section:

(a) "Account receivable" means the contractual obligation of the participant to the exporter for the export value of the U.S. agricultural commodity exported by the exporter to the participant. The account receivable establishing the contractual obligation between the exporter and the participant shall be evidenced by documents in form and substance satisfactory to CCC.

(b) "General Sales Manager" means the General Sales Manager, Foreign Agricultural Service, USDA, or the General Sales Manager's designee.

(c) "Assurer" means the institution which assures, on behalf of the participant, repayment in U.S. dollars of the amount financed by CCC with interest in accordance with provisions of the project agreement between CCC and the participant. An "assurer" may be a U.S. bank or financial institution; a foreign private bank or financial institution; or a central bank, government agency; or a foreign government.

(d) "Carrying charges" means storage, insurance, and interest charges involved in the cost of handling and storing the agricultural commodity before export and such other incidental costs as may be approved by the General Sales Manager.

(e) "CCC" means the Commodity Credit Corporation, U.S. Department of Agriculture.

(f) "Commodity agreement" means the written agreement entered into between CCC and an exporter under which the exporter agrees to export an eligible U.S. agricultural commodity in accordance with the exporter's export sales contract with the participant and the provisions of GSM-301 in consideration of CCC's agreement to purchase the exporter's account receivable after export of the commodity and upon submission of the required documents specified in § 1492.29.

(g) "Commodity purchase authorization" means a USDA announcement published by the U.S. Department of Agriculture pursuant to GSM-301 in which the General Sales Manager authorizes the participant to purchase commodities from exporters in accordance with the commodity purchase authorization and project agreement.

(h) "Date of export" means the on-board date of an ocean bill of lading, or the date of an airway bill, or if export is by rail or truck, the date of entry shown on an authenticated landing certificate or similar document issued by an official of the government of the importing country.

(i) "Date of sale" means the earliest date the exporter has knowledge that a contractual obligation exists with the participant under which a firm dollar-and-cent price has been established or a mechanism to establish the price has been agreed upon.

(j) "Eligible commodity" means any agricultural commodity or product thereof, including eligible cotton, produced in the United States and designated by the General Sales Manager as eligible for financing under GSM-301. Commodities which have been purchased from CCC are also eligible for export under GSM-301. Exports of commodities financed through a direct loan by the Export-Import Bank of the United States or pursuant to any CCC barter contract, Pub. L. 480 agreement, Agency for International Development agreement, or any other concessional-type transactions are not eligible for financing under GSM-301.

(k) "Eligible cotton" means upland and extra-long staple cotton grown in the United States that is eligible for financing hereunder but excludes reginned or repacked cotton, as defined in regulations of the U.S. Department of Agriculture under the U.S. Cotton Standards Act (7 CFR 28.40), by-products of cotton such as cotton mill waste, motes, and linters, and any cotton that contains any by-products of cotton. CCC's determination as to the eligibility of cotton shall be final.

(l) "Eligible exporter" or "exporter" means a person who is (1) engaged in the business of buying or selling commodities for export and for this purpose maintains a bona fide business office in the United States, its territories or possessions, and has someone on whom service of judicial process may be had within the United States, (2) financially responsible, and (3) not suspended or debarred from contracting or participating in any program administered by CCC on the date of issuance of the commodity agreement.

(m) "Eligible importing country" means the country (1) which is named in the project agreement between CCC and the participant and in the commodity agreement between CCC and the exporter, and (2) which meets the licensing requirements of the U.S. Department of Commerce.

(n) "Export" means the export of the U.S. agricultural commodity as required by the export sale contract between the participant and exporter to transfer to the participant full or conditional title to the commodity. Export from the United States shall be f.a.s. or f.o.b. export carrier at U.S. ports, airports, and border points of exit or, if transshipped through Canada, at ports on the Great Lakes and the St. Lawrence River.

(o) "Export value" means the net amount of the exporter's sale price for the commodity delivered to the participant under a commodity agreement, basis f.a.s. or f.o.b. export carrier at U.S. ports, airports or border points of exit, or, if transshipped through Canada, at ports on the Great Lakes or on the St. Lawrence River. The export value shall not include ocean freight for a c & f sale, or ocean freight and marine and war risk insurance for a c.i.f. sale, but may include carrying charges as provided for in the export sales contract. The net amount of the exporter's sales price means the exporter's contract price for the commodity, on the basis stated above, less any payments made to the exporter and less any discounts, credits, or allowances by the exporter.

(p) "Financing period" means the number of years and months over which payment is to be made which shall be in excess of three years but not more than ten years. Such period shall start on the date of export of the commodity and shall expire on the expiration of the financial assurance established by the participant or the specified period over which repayments are to be made, whichever occurs first.

(q) "GSM-301" means the regulations contained in this Subpart A and USDA announcements thereto, setting forth the terms and conditions governing the CCC Intermediate Credit Export Sales Program for Foreign Market Development Facilities.

(r) "Project agreement" means the written agreement entered into between CCC and a participant for the financing of U.S. agricultural commodities on credit pursuant to the purpose described in § 1492.1(b).

(s) "Participant" means a foreign government, a U.S. or foreign individual, group of individuals, partnership, corporation, association, cooperative or other entity which:

(1) Enters into a project agreement with CCC,

(2) Purchases U.S. agricultural commodities from an exporter to be exported from the U.S. to the importing country named in the commodity agreement, and

(3) Executes the documents evidencing the account receivable which is assigned to CCC.

(t) "Supply year" or "fiscal year" means the twelve-month period beginning October 1 and ending the following September 30.

(u) "United States" means the 50 States, the District of Columbia, and Puerto Rico.

PROJECT AGREEMENTS

§ 1492.3 General.

To qualifying for a project agreement, an applicant must submit:

(a) An application for a project agreement; (b) a project plan and cost information; (c) a feasibility study and engineering report except when the General Sales Manager determines that such a study or report is not necessary; (d) certain legal documents; and (e) an assurance of payment. After a project agreement is signed by the General Sales Manager and the participant, the General Sales Manager will issue an authorization for the participant to purchase U.S. agricultural commodities. The commodities are then purchased and imported into the eligible country and sold by the participant, or the commodity may be processed into products and the products sold, and the proceeds from the sale of the commodity or product deposited in a financial institution. The funds are then available to the participant to carry out the construction of the market development project approved in the agreement. The participant will be required to make reports on the use of project funds and progress toward completion of the project. Activities under a project agreement will be reviewed by CCC to determine compliance with the project agreement.

§ 1492.4 Eligible projects and participants.

(a) Local currency generated from the import and sale of the commodity, or product thereof, shall be used by the participant for the establishment of facilities in the importing country to improve handling, marketing, processing, storage, or distribution of imported agricultural commodities which will improve market opportunities for the export sale of U.S. agricultural commodities.

(b) Projects which may be approved include, but are not limited to, feed and flour mills; bulk unloading, handling and storage facilities at ports and inland points; oilseed crushing and vegetable oil refining facilities; livestock receiving facilities; livestock feeding lots; processing plants; model bakeries; poultry facilities; and tallow refining facilities.

(c) The General Sales Manager may enter into project agreements with foreign governments, U.S. or foreign individuals, group of individuals, partnerships, corporations, associations, cooperatives, or other entities.

(d) If the project agreement is entered into with a foreign government, the foreign government may carry out the establishment of facilities directly or the foreign government may, if approved in the project agreement, enter into an agreement with a private business entity under which the private business entity would carry out the establishment of the facility. The private business entity and the plan of the private business entity to carry out the establishment of the facility must be approved by the General Sales Manager.

(e) If a non-government entity is to be the participant, it must furnish the General Sales Manager with a written statement from the foreign government of the country in which the project is to be carried out showing the foreign government's approval of the proposed project.

(f) The General Sales Manager will request the Agricultural Counselor or Attache assigned to the country in which the project is to be carried out and other interested U.S. agencies to furnish their recommendations concerning the proposed project.

§ 1492.5 Submission of application for a project agreement.

(a) An applicant for a project agreement shall submit a written application to the General Sales Manager. The application shall include, but is not limited to, the following:

(1) Name of the applicant and address, type of organization (company, corporation, cooperative, government or other entity), nature of its business and operations and, if a corporation, a copy of its articles of incorporation and by-laws.

(2) Name and address of any firm or individual with which the applicant has a business affiliation, i.e., ownership interest.

(3) A summary of the applicant's experience in dealing with agricultural commodities.

(4) If the applicant is a private organization and the Government of the importing country is to participate in the project, the nature and extent of Government participation in the ownership, financing, or operation of the project. If the Government of the importing country will not be participating in the project, the extent to which the applicant has discussed the proposal with officials of the Government.

(5) Information on each of the applicant's principal officers and managerial personnel as follows:

(i) Full name,

(ii) Position,

(iii) Place and date of birth (day, month, and year),

(iv) Present citizenship,

(v) Business and private addresses, and

(vi) Summary of business experience.

(6) The name of the importing country.

(7) The kind and quantity of agricultural commodity proposed for financing.

(8) The period of time during which the commodity would be exported.

(9) A statement of the applicant's plans for selling the commodity to end users within the importing country or,

if the applicant is the intended processor or user, the applicant's plans for processing or using the commodity.

(10) The repayment period considered necessary by the applicant to carry out the project.

(11) Name and address of the financial institution which shall provide the required assurance of U.S. dollar payment to CCC as provided in § 1492.10.

(12) The most recent statement of financial position and profit and loss statement of the applicant.

(13) Projected cash-flow statements covering the repayment period.

(14) The extent to which the applicant has discussed the proposal with the U.S. Agricultural Counselor or Attaché or with representatives of the American Embassy and other U.S. agencies.

(15) Brief statement explaining any requests made by the applicant to other U.S. lending organizations, such as the Overseas Private Investment Corporation or the Export-Import Bank of the U.S., to obtain financing for the proposed project and the results of such requests.

(16) Project plans and information as provided in § 1492.6.

(17) Other information or documents as may be requested by the General Sales Manager.

(b) An application may be approved as submitted, approved with modification, or rejected by the General Sales Manager.

§ 1492.6 Project plan and information.

(a) The applicant shall furnish the following information to the General Sales Manager:

(1) *Project plans.* A complete description of the project; plan for carrying out the project; time schedule for carrying out the project, including the approximate starting and completion dates; purpose and need of the project in the importing country; expected effect the project will have on future imports of agricultural commodities into the importing country; and any other information which would demonstrate the soundness of the project plan.

(2) *Project cost estimates.* An estimate of the total cost to carry out the project with a breakdown of the total costs among major categories involved in the project, such as technical services (architectural and engineering), land, construction services, materials, machinery and equipment, financing costs, administrative and overhead costs. An allocation of each such category of costs to project funds and to resources to be provided by the participant. Unless otherwise agreed to in writing by the General Sales Manager, financing costs (other than interest to be paid by the participant for the financing provided by CCC under the project agreement) and related guarantee fees and administrative and overhead charges incurred by the participant cannot be allocated to project funds.

(3) *Project fund estimate.* An estimate of the project funds needed to carry out the project and a certification by the participant which provides substantially as follows: "I certify that the project cost estimates allocated to be paid with project funds represents a reasonable estimate of the financing needed to carry out the project."

(4) *Participant resources.* An estimate of the value of resources (working capital, land, buildings, machinery and equipment, etc.) to be provided by the participant. Show the amount of any encumbrance which may apply to the resource. A resource may include that portion of the estimated export value of the commodity to be exported from the U.S. which the applicant will pay with the applicant's own resources. If the applicant is required by the General Sales Manager to make a further investment in the project, a detailed description of the nature and the value of the resource which will represent such investment. When requested by the General Sales Manager, the applicant must furnish a detailed independent appraisal of the value of the resources.

(5) *Tentative schedule of disbursements.* A tentative time schedule for project fund disbursements which shows the estimated disbursement for each major cost category for each semi-annual period of the financing period.

(b) The applicant must furnish a feasibility study to demonstrate the soundness of the proposed project except when the General Sales Manager determines that such a study is not necessary.

(c) (1) The applicant shall employ the services of a competent engineering firm for the planning and development of the project and for supervision of the execution of the project except when the General Sales Manager determines that such services are not necessary.

(2) If the services of an engineering firm are required, the applicant's arrangement with the engineering firm shall provide that the engineering firm furnish a certification with respect to the project plans and cost estimates as follows: "We hereby certify that we have reviewed the accompanying information on the project plans which we understand (name of applicant) is required to submit to the Commodity Credit Corporation. We further certify that this information is in accordance with the project plans and the specifications prepared by us, or with our advice and consultation, and that the cost estimates are reasonable and proper." The certification shall show the name and address of the engineering firm and shall be signed by an authorized representative of the firm.

(d) The General Sales Manager shall have the right to request the applicant to furnish copies of the detailed architectural and engineering plans and specifications and detailed cost estimates.

(e) The applicant shall furnish such other information, certifications, or documents as requested by the General Sales Manager.

(f) After the project plans have been approved by the General Sales Manager, the project and the plan for carrying out the project may be modified only by mutual agreement of the General Sales Manager and the participant in writing.

§ 1492.7 Legal opinions and documents.

Unless otherwise agreed to by the General Sales Manager in writing, the applicant shall furnish to the General Sales Manager in form and substance satisfactory to the General Sales Manager, the following:

(a) An opinion prepared by the applicant's counsel showing that under the laws of the importing country:

(1) The applicant has the power and authority to enter into the project agreement and perform its obligations under the project agreement;

(2) The project agreement, as signed by the participant, or on behalf of the participant, is valid and legally binding upon the participant;

(3) Repayments of principal and interest due CCC are authorized to be made in U.S. dollars under the foreign exchange authorization issued by an official of the foreign government or under provision of law.

(4) The project agreement may be enforced by legal proceedings against the participant upon failure of the participant to meet its obligations under the project agreement;

(5) Judgments rendered in favor of CCC may be collected in U.S. dollars.

(6) Such other legal opinions including, but not limited to, an opinion with respect to the validity of the assurance of payment, certifications and documents furnished to CCC.

The opinions shall refer to all pertinent documents, decrees, laws, regulations, and legal precedents which serve as a basis for the conclusions stated therein, and shall set forth the procedures which CCC would have to follow in any legal proceedings against the participant and in collecting judgments awarded to CCC pursuant to such proceedings.

(b) A designation by name and title of the person or persons authorized to represent the participant in accordance with § 1492.35 and the authenticated specimen signature of each person.

(c) A foreign exchange authorization showing the signature, title, and organization of the issuing official of the foreign government which authorizes U.S. dollar funds for the repayment of principal and interest in accordance with the project agreement and a certificate of authentication of the authorization executed by an officer of the American Embassy in the importing country.

(d) An assurance of payment acceptable to CCC covering the principal and interest.

(e) Evidence satisfactory to the General Sales Manager that the participant has made arrangements for the services of an engineering firm acceptable to the General Sales Manager, except when the General Sales Manager determines that the services of an engineering firm are not necessary.

(f) The name and address of the financial institution in which project funds are to be deposited.

§ 1492.8 Subsequent legal opinions and documents.

Subsequent to the issuance of the first purchase authorization but prior to the issuance of each additional purchase authorization or any amendment which increases the maximum amount of a purchase authorization, the participant shall, when requested by the General Sales Manager, furnish:

(a) Additional assurance of payment if, as determined by the General Sales Manager, existing assurances are not sufficient.

(b) Additional foreign exchange authorization and related documents specified in § 1492.7(c), if, as determined by the General Sales Manager, existing authorizations and related documents are not sufficient.

(c) Such other additional legal opinions and documents as may be requested by the General Sales Manager.

§ 1492.9 Investment by the participant.

(a) The participant is required to make an initial payment at the time of export of the commodity of at least 15 percent of the export value of the commodity unless the General Sales Manager determines that a lower initial payment is appropriate. The percentage amount and manner of making such payment will be specified in the project agreement and in the commodity purchase authorization issued by the General Sales Manager pursuant to § 1492.13.

(b) When deemed appropriate by the General Sales Manager to protect the interests of CCC, the participant shall also be required to further invest in the project. Such investment may include initial working capital, administrative and overhead costs, the cost of feasibility and engineering studies, organizational expenses, land, construction costs, machinery and equipment, etc. The participant must furnish the amount of any encumberance which applies to the resource. When requested by the General Sales Manager, the participant must furnish a detailed independent appraisal of the value of the investment to be made by the participant.

§ 1492.10 Assurance of payment to CCC.

(a) Repayment of amounts due CCC for commodities financed under a project agreement must be secured by an assurance of payment issued by an assurer acceptable to CCC. The assurance of payment must provide adequate protection to CCC from failure of the participant to make scheduled repayments, from failure of the participant to complete the planned project, or failure to perform other obligations under the project agreement. An application for a project agreement will not be approved if the proposed assurer is not acceptable to the General Sales Manager because of its ability to provide reasonable and adequate assurance of full repayment to CCC.

(b) The assurance of payment shall be in the form of a letter of credit or other assurance of payment acceptable to the General Sales Manager.

(c) The assurance of payment shall obligate the assurer to pay CCC on demand in U.S. dollars the amount of the outstanding balance of the principal plus interest in the event of noncompliance with the project agreement.

(d) An acceptable assurance of payment covering the estimated export value of the commodity to be purchased and financed by CCC must be received by the General Sales Manager prior to the issuance of a commodity purchase authorization.

§ 1492.11 Credit terms and other financing provisions.

(a) The financing of commodities to the participant shall be through the purchase by CCC of an exporter's account receivable arising from an export sale after the commodity has been exported.

(b) Repayment shall be made to CCC by the participant in approximately equal semi-annual amounts with the first repayment being due on the date specified in the project agreement with subsequent repayments to be made semi-annually thereafter. Any semi-annual repayment, or repayment of the total amount of principal outstanding, may be made at any time prior to the due date thereof.

(c) The financing period approved for a particular project agreement will be based on factors such as the type of project, planning and completion time of the project and the project's ability to generate funds to liquidate the financing extended. The financing period determined appropriate shall be stated in the project agreement. CCC will consider granting a suitable grace period for the beginning date for repayment of principal based upon construction time and the ability of the project to generate sufficient cash flows to meet principal and interest payments and to provide returns for the equity investment by the participant.

(d) At the end of each calendar year, CCC will furnish to the participant a repayment schedule of the principal applicable to commodities exported in the prior twelve month period. The principal shall consist of the U.S. dollar amount disbursed for the account of the participant by CCC for the commodities exported in each calendar year less any adjustments. The principal with interest thereon shall be repaid to CCC semi-annually in accordance with the terms of the project agreement.

(e) The project agreement shall stipulate the interest rate to be paid to CCC. The interest rate shall be fixed at the time the project agreement is signed by the General Sales Manager and the participant and shall apply to export sales made during a designated period of time. After the expiration of such period, CCC shall determine the interest rate which will apply to subsequent export sales. The project agreement will be amended to reflect such rate and the period of time the rate will be in effect for export sales.

(f) Interest on the unpaid balance of the principal shall begin on the date of export of the commodity. Accrued interest shall be paid in U.S. dollars on the date which payment of principal is scheduled to be paid. Interest shall accrue on any installments determined by CCC to be in arrears.

(g) Repayments made by the participant shall be applied first to accrued interest due and then to principal. Principal and interest shall be paid without deduction for any taxation, including fees and impositions, now or at any time hereafter imposed under the laws of the importing country or any other country.

(h) All obligations of the participant to make repayments to CCC under the project agreement shall be stated in U.S. dollars and shall be discharged by payments in U.S. dollars.

(i) CCC shall have the right to sell or otherwise dispose of the amounts due CCC from the participant. CCC will give notice to the participant prior to any such sale or other disposition.

(j) The participant shall have the right to make prepayments of accrued interest and scheduled principle installments, in part or in full, without penalty.

(k) Information as to financing terms and interest rates may be obtained from the General Sales Manager.

§ 1492.12 Eligible importing countries.

Commodities financed under GSM-301 must be imported into the country in which the local currency generated from the sale of such commodities is to be utilized for the establishment of market development facilities.

§ 1492.13 Commodity purchase authorizations.

(a) After a project agreement is signed, the participant may request the General Sales Manager to issue commodity purchase authorizations for the commodity to be purchased under the terms of the project agreement.

(b) Commodity purchase authorizations will specify: The purchase authorization number; the kind of commodity to be purchased; the contracting period; the period during which the commodity must be exported; the approximate quantity and maximum U.S. dollar value of the commodity to be purchased; the importing country; the name of the participant or its agent, to whom bids must be submitted by the exporter; the percentage amount of the U.S. dollar value of the commodity exported which will be financed by CCC; the percentage amount of the U.S. dollar value of the commodity exported which will be paid for by the participant with the participant's own resources; and other information deemed necessary by the General Sales Manager.

§ 1492.14 Export periods.

The commodity to be financed shall be exported during the export period specified in the project agreement and purchase authorization unless the General Sales Manager agrees in writing to an extension of such export period. If a project agreement provides for the purchase of commodities during more than one supply year, the issuance of purchase authorizations for each supply year shall be subject to the General Sales Manager's determinations as to: availability of funds; availability of the kind of commodity specified in the project agreement; and evidence that satisfactory progress has been made by the participant in carrying out the project.

§ 1492.15 Export value of the commodity to be financed.

CCC will finance only that portion of the export value of the commodity exported by the exporter to the participant pursuant to the provisions of the export sale and the purchase authorization for which the exporter has complied with the applicable provisions of GSM-301.

§ 1492.16 Determination of project funds.

Project funds shall consist of the local currency proceeds received by the participant from the sale of the imported commodity or the sale of products produced from the imported commodity which shall, unless otherwise agreed in writing by the General Sales Manager and the participant, be determined as follows:

(a) *Imported commodities sold without processing.* When the commodity imported by the participant is sold without processing, the amount of the project funds shall be the total sale proceeds which the participant receives from such sales; *Provided,* That, in determining the amount of the project funds, the participant may deduct from the total sale proceeds, the local currency equivalent of the following costs if paid by or for the account of the participant and if such costs are included in fixing the sales price of the imported commodity:

(1) Ocean freight and marine insurance; (2) fees and other related charges of banks for commercial letters of credit used to effect payment to exporters of the commodity and suppliers of related ocean freight and marine insurance; and (3) such other costs incident to the procurement, importation, handling, and sale of the commodity as may be approved by the General Sales Manager in writing; *Provided further,* That, the participant shall not deduct from the total proceeds any local currency to offset the amount of the initial payment made by the participant with the participant's own funds.

(b) *Imported commodities processed before being sold.* When the imported commodities are used in the production of a processed commodity (hereinafter called "the product"), the amount of project funds shall be computed by (1) determining the percentage of the value of the imported commodity used in the processing of the product to the total cost of the product and (2) multiplying such percentage by the total sale proceeds received, or to be received, from the sale of the product; *Provided,* That, in determining the value of the imported commodity to be included in the cost of the product, the participant may, if paid by or for the account of the participant, deduct the local currency equivalent of the following costs:

(i) Ocean freight and marine insurance; (ii) fees and other related charges of banks for commercial letters of credit used to effect payment to exporters of the imported commodity and suppliers of related ocean freight and marine insurance; and (iii) other such costs incident to the procurement, importation, and handling of the commodity and sale of the product as may be approved by the General Sales Manager in writing; *Provided further*, That, the participant shall not deduct from the total sale proceeds any local currency to offset the amount of the initial payment made by the participant with the participant's own resources. For example: The participant is a flour miller who imports wheat for production of flour. Proceeds from the sale of the flour milled from wheat imported under a project agreement are to be used to expand the milling capacity and for modernization of the existing facility. Proceeds from the sale of the flour which would be considered as project funds would be calculated in the following manner:

	Metric ton
Value of the imported wheat at mill location [1]	$250.00
Processing costs	50.00
Total cost of producing flour	$300.00
Value of imported wheat to total cost of flour (percentage)	83.3
Revenue received from the sale of flour	$325.00
Project funds ($325 × 83.3%)	$270.73

[1] After deduction of allowable expenses

The participant's method of recording sales and production costs, including the value of the imported commodity and allocation of the participant's processing costs to the product produced from the imported commodity and the computation of project funds must be approved by the General Sales Manager in writing.

(c) *Sale proceeds which are less than export value.* If the net sale proceeds determined under this section are less than the U.S. dollar equivalent of the export value of the commodity, the participant shall be required to establish additional equity in the project with the participant's own resources equivalent in value to the difference between the U.S. dollar equivalent of the net sale proceeds and the export value of the commodity. The method of establishing the additional equity must be approved by the General Sales Manager in writing.

(d) *Sale proceeds which are more than export value.* If the net sale proceeds determined under this section are more than the U.S. dollar equivalent of the export value of the commodity, the entire amount of the net sale proceeds shall be used by the participant for carrying out the approved project.

(e) *Other proceeds which are considered project funds.* Where reference is made in this section to the amount which the participant receives on the sale of the imported commodity or the product processed from imported commodity, it means all considerations of any kind, including commissions and interest, which the participant is entitled to receive on such sale.

(f) *Disallowance of deductions.* The General Sales Manager shall be entitled to disallow any of the deductions or exclusions claimed by the participant and to require the participant to use the total amount of such disallowances for approved project purposes.

(g) *Market value of commodity.* Notwithstanding any other provision of GSM-301 or the project agreement, the General Sales Manager may consider the prevailing market value of the commodity in the importing country, less allowable deductions as determined by the General Sales Manager, as the amount of the project funds for the imported commodity.

§ 1492.17 Deposit of project funds.

(a) The participant shall deposit the local currency proceeds from the sale of the commodity or the products thereof in a financial institution acceptable to the General Sales Manager immediately following the receipt of such proceeds. Interest earned on such deposits shall be retained in the account.

(b) When approved in writing by the General Sales Manager, the local currency proceeds desposited in the financial institution may be converted to U.S. dollars provided such U.S. dollars remains in the account until used for carrying out the approved project.

§ 1492.18 Use of project funds.

(a) Local currencies accruing from the sale of the commodity, or the products thereof, including interest earned on such local currencies, shall only be used for carrying out the approved project.

(b) Project funds may not be used for financing costs (other than interest to be paid by the participant for the financing provided by CCC under the project agreement) guarantee fees, and administrative and overhead costs incurred by the participant in carrying out the project unless otherwise agreed to in writing by the General Sales Manager. Such costs must be paid for by the participant with the participant's own resources.

§ 1492.19 Signing of project agreements.

The project agreement shall be signed by the participant. The General Sales Manager shall sign the project agreement on behalf on CCC.

§ 1492.20 Customs entry.

(a) The participant shall furnish evidence of customs entry into the importing country of the commodities purchased under a project agreement. The evidence shall consist of a copy of a customs entry certificate issued by a duly authorized official of the importing country showing:

(1) The kind and quantity of the commodity,

(2) Carrier identification,

(3) Purchase authorization number,

(4) The exporter's name, and

(5) Exporter's sales invoice number.

(b) The customs entry certificate shall be furnished to the General Sales Manager no later than sixty (60) days after the date of export of the commodity from the United States.

§ 1492.21 Books, records, reports, and compliance policies.

(a) The participant shall maintain books and records covering all transactions relating to the project agreement. Such books and records, including pertinent documents, correspondence, memoranda and other records of the participant shall be subject to examination by the General Sales Manager or the General Sales Manager's authorized representative during normal business hours of the participant for a period of three years after the entire amount due CCC under the project agreement has been repaid.

(b) The participant shall furnish to the General Sales Manager such books, reports and information as may be required by the project agreement. Such reports shall include, but shall not be limited to, progress reports on the implementation of the project, reports covering the receipt and expenditure of project funds and financial reports.

(c) Activities under a project agreement shall be subject to such other review or investigation as the General Sales Manager deems necessary to assure compliance with the provisions of the project agreement.

(d) The participant shall cooperate with and give reasonable assistance to the General Sales Manager or the General Sales Manager's authorized representative in such review or investigation as well as the examination referred to in paragraph (a) of this section.

§ 1492.22 Warranties by the participant.

The participant represents, warrants, and undertakes as follows:

(a) The participant is a duly organized and existing legal entity under the laws applicable to it, has full authority to carry on its present business and to enter into the project agreement, and has furnished the General Sales Manager with a true copy of the documents by which it was organized.

(b) The participant has no business affiliations, i.e., ownership interest, with any firm or individual other than those disclosed in the application for a project agreement.

(c) The participant has disclosed to the General Sales Manager in writing all agreements which are material to the project agreement.

(d) The participant knows of no conditions which will interfere with, or threaten to interfere with, the participant's ability to discharge its obligations under the project agreement, and agrees to promptly inform and consult with the General Sales Manager with respect to any conditions which may arise which would have such effect.

(e) The participant shall not transfer or assign the project agreement or any of its rights thereunder, nor sell, transfer or assign its rights to any facility or any other real or personal property financed in whole or in part with project funds without the approval of the General Sales Manager.

(f) The participant shall obtain the written approval of the General Sales Manager before entering into any joint venture or any other arrangement with another entity that involves the commodities imported or to be imported under this agreement or which involves the project financed with project funds.

(g) The participant warrants that no person or selling agency has been employed or retained to solicit or secure the project agreement on an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the participant for the purpose of securing business. For breach or violation of this warranty, the General Sales Manager shall have the right, without limitation on any other rights it may have, to cancel the project agreement without liability to CCC.

(h) If the participant is required under § 1492.9 to invest in the project, the participant warrants that none of the resources invested are subject to any encumberances other than those which are disclosed in the information referred to in §§ 1492.6(a)(4) and 1492.9(b) or otherwise disclosed in writing to the General Sales Manager.

§ 1492.23 Events of default.

The occurrence of any of the following events may, at the election of the General Sales Manager, be deemed to be a default in the performance of the participant under the project agreement:

(a) Failure of the participant to make prompt and full repayment of principal or interest when due, or of any other payment required under the project agreement.

(b) A breach on the part of the participant of any obligation or warranty under the project agreement unless the General Sales Manager permits the participant to cure the breach within a specified time and the participant cures it to the satisfaction of CCC within that time.

(c) A false representation made by or on behalf of the participant in obtaining the project agreement, in the project agreement, or in the performance of the project agreement.

(d) A determination by a court of competent jurisdiction or an admission by the participant that the participant is insolvent, bankrupt, or otherwise unable to pay its debts as they become due.

§ 1492.24 Remedies of CCC in the event of default.

(a) *Termination of disbursements.* Upon the occurrence of any default set forth in § 1492.23, or upon the failure of the participant to perform any other obligation specified in the project agreement which permits the taking of the actions set forth in this § 1492.24, the General Sales Manager shall have the right to take any or all of the following actions:

(1) Decline to issue commodity purchase authorizations to the participant;

(2) Cancel, outstanding commodity purchase authorizations;

(3) Decline to enter into a commodity agreement with an exporter; and

(4) Suspend or cancel outstanding commodity agreements entered into with exporters under which CCC agreed to purchase the exporter's accounts receivable.

(b) *Change in political, economic, or monetary situation.* In the event of any material change in the political, economic, or monetary situation in the importing country which the General Sales Manager determines will have an adverse effect on the ability of the participant to fulfill its obligations under the project agreement, the General Sales Manager shall have the right to take any or all of the actions set forth in paragraph (a) of this section.

(c) *Acceleration of payment of principal.* Upon the occurrence of any default set forth in § 1492.23, the General Sales Manager shall have the right to declare all or any part of the principal and interest thereon to be immediately due and payable.

(d) *Remedy in case of contingent fee.* For breach or violation of the warranty against contingent fees which is set forth in § 1492.22(g), the General Sales Manager shall be entitled to cancel the project agreement or, at the General Sales Manager's discretion, to require the participant to pay to CCC in U.S. dollars the full amount such commission, percentage, brokerage, or contingent fee or to deduct commission, percentage, brokerage, or contingent fee from payments of principal made to CCC by the participant.

(e) *Refunds to CCC.* If the General Sales Manager determines that any disbursement of project funds is not supported by valid documentation as required by GSM-301 or the project agreement, or was at the time of disbursement in violation of the project agreement or the laws governing CCC, the participant shall pay to CCC on demand the amount of such disbursement together with the interest thereon at the interest rate specified in the project agreement from the date of such disbursement to the date payment is received by CCC. Upon receipt of such refund, CCC will deduct the amount of the refund, exclusive of interest, from the total principal outstanding and due CCC.

(f) *Force majeure.* (1) The provisions of this paragraph shall apply in lieu of any other provisions of GSM-301 or the project agreement with respect to default, delay, or failure to perform in carrying out the project if the participant maintains, and the General Sales Manager determines in writing, that such default, delay, or failure to perform on the part of the participant is due to force majeure (including but not limited to, war, insurrection, riots, fires, strikes, floods, acts of God, acts of governments and agencies thereof which the participant had no reason to anticipate) and such default, delay, or failure to perform could not have been prevented by the exercise of reasonable diligence on the part of the participant.

(2) The General Sales Manager shall have the right to take any or all actions set forth in § 1492.24(a) pending a final determination as to whether
the project may be carried out. If th
cause of the default, delay, or failur
to perform cannot be overcome by th
participant, the General Sales Manag
er shall be entitled to take any or al
actions set forth in § 1492.24(a) and t
declare all or any part of the outstand
ing principal due CCC to be immedi
ately due and payable to CCC.

(g) *Other remedies.* The use by th
General Sales Manager of any remed
provided for in this section shall no
prevent the General Sales Manage
from using any other remedy provide
for in the project agreement or other
wise available at law or equity, includ
ing any sanction or penalty unde
criminal or civil fraud statutes.

COMMODITY AGREEMENTS

§ 1492.25 General.

(a) Sections 1492.25 to 1492.43 con
tain the provisions under which an ex
porter who makes an export sale to
participant and who has entered into
commodity agreement with CCC may
after export of the commodity, receiv
payment from CCC for the expor
value of the commodity through th
purchase by CCC of the exporter's ac
count receivable for that portion o
the export value of the commodity fo
which CCC will provide financing
CCC will issue commodity purchas
authorizations pursuant to § 1492.1
which will authorize the participant o
the participant's authorized agent t
purchase eligible commodities from
exporters.

(b) After export of the commodity
the exporter must furnish the applica
ble documents and certifications re
quired by § 1492.31 to the addres
specified in § 1492.43(b)(2). If the doc
uments and certifications are in orde
and acceptable to CCC, CCC will pur
chase only that portion of the export
er's account receivable for which th
exporter has complied with the appli
cable provisions of this regulation an
will make prompt payment to the ex
porter.

(c) The General Sales Manager re
serves the right at any time and fo
any reason or cause whatsoever to sup
plement, modify, or revoke any com
modity purchase authorization, includ
ing termination of commodity agree

ments made pursuant to such purchase authorization.

§ 1492.26 Submission of application for a commodity agreement.

(a) An exporter shall submit a written application (e.g. letter, telex, or TWX) to enter into a commodity agreement to the office specified in § 1492.43(b). If the application is made by telephone, it must be confirmed in writing. An application shall include the full business name and address of the exporter and the following information:

(1) Name and address of the participant and, if export is to be made to an agent of the participant, the name and address of such agent.

(2) The name of the importing country.

(3) Date of sale.

(4) Exporter's sale number.

(5) Delivery period.

(6) Kind and description of commodity.

(7) Quantity and sale contract tolerance, if applicable.

(8) The unit price and total export value of the commodity, including the value of the upward contract tolerance, if appropriate.

(9) The name and address of the intervening purchaser, if the commodity is to be sold through an intervening purchaser, and a statement that the sale of the commodity is or will be conditioned on its resale by the intervening purchaser to the participant and that the commodity will be shipped directly to the participant or to the participant's agent in the destination country.

(10) CCC purchase authorization number.

(11) Any additional information as determined by the General Sales Manager.

(b) Upon receiving an application complying with the applicable provisions of GSM-301, the General Sales Manager shall determine whether the application shall be approved. If approved, the General Sales Manager shall cause a commodity agreement to be issued to the exporter.

(c) An application may be approved as submitted, approved with modification, or rejected by the General Sales Manager.

§ 1492.27 Commodity agreements.

(a) The commodity agreement between the exporter and CCC shall consist of the exporter's application, the General Sales Manager's written acceptance of the application and the applicable terms and conditions of GSM-301, including any amendments or supplemental announcements thereunder which are in effect at the time the commodity agreement is issued to the exporter.

(b) The commodity agreement shall provide that CCC will purchase the exporter's account receivable after export of the commodity to the participant and upon submission to CCC of the applicable documents and certifications required by § 1492.31.

(c) The commodity agreement may contain such terms and conditions, not inconsistent with GSM-301, as the General Sales Manager deems necessary in the interest of CCC.

(d) An exporter shall promptly notify the General Sales Manager when he is unable to fulfill his obligations under a commodity agreement.

§ 1492.28 Amendments to commodity agreements.

The commodity agreement may be amended provided such amendment is in conformity with GSM-301 at the time of the amendment and the amendment is determined by the General Sales Manager to be in the interest of CCC.

§ 1492.29 Export periods.

The commodity shall be exported during the export period specified in the commodity agreement and purchase authorization unless the General Sales Manager agrees to an extension of such export period.

§ 1492.30 Partial payment by the participant.

Purchase authorizations issued pursuant to § 1492.13 shall specify that the project participant make at the time of export an initial down payment representing a portion of the export value of the commodity. The amount of the initial payment will be stated in the purchase authorization. The arrangement for payment of the amount of the export value not financed by CCC is a matter for agreement between the exporter and the participant.

§ 1492.31 Documents required after export.

(a) CCC will purchase an exporter's account receivable only if the documents specified in paragraphs (b) and (c) of this section are received by the Treasurer, CCC, within forty-five (45) days, or any extension thereof granted by the Treasurer, CCC, after the date of export of the commodity.

(b) The exporter shall submit a "Combined Application for Disbursement, Assignment of Account Receivable and Certification (GSM-301)" which shall include:

(1) A written application for disbursement showing: (i) The commodity agreement number; (ii) total export value of the commodity exported; and (iii) the value of the commodity for which payment is requested from CCC.

(2) An assignment of the account receivable, acceptable to CCC, arising from the export sale.

(3) A certification by the exporter which provides: (i) That the exporter has entered into an export sales contract with the participant to sell the commodity exported; (ii) the date of the sale; (iii) the kind, grade, quality, quantity, agreed upon price for the commodity and delivery terms of the sale; (iv) that the exporter has in the exporter's files documents evidencing the export sale contract and the obligation of the participant to the exporter for that portion of the value of the export sale for which CCC will purchase the exporter's account receivable, and that the exporter will retain and furnish such documents to CCC on demand until 3 years after the final date of export of the commodity under the export sale; (v) that the kind, grade, quality, and quantity of the commodity called for in the export sales contract and reported to CCC in the application for a commodity agreement has been exported to the participant; and (vi) that the exporter knows of no defenses to the account receivable to be assigned to CCC.

(4) A copy of the sales invoice to the participant or, if the commodity has been sold through an intervening purchaser, a copy of the intervening purchaser's sales invoice to the participant.

(c) The exporter shall furnish with the application for disbursement, the following evidence of export, as applicable:

(1) If the commodity is exported by ocean carrier, one non-negotiable copy of either (i) an onboard ocean bill of lading or (ii) an ocean bill of lading with an onboard endorsement, dated and signed or initialed on behalf of the carrier. The bill of lading must be certified by the exporter as being a true copy and must show the kind and quantity of commodity, the date and place of loading the commodity, the name of the ocean carrier, the importing country, and the name and address of both the exporter and the participant, or if the export was made to an agent of the participant, the name and address of the agent.

(2) If the commodity is exported by aircraft, one non-negotiable copy of an airway bill, dated and signed or initialed on behalf of the carrier. The airway bill must be certified by the exporter as being a true copy and must show the kind and quantity of commodity, date and place of loading the commodity, the name of the airline, the destination country and the name and address of both the exporter and the participant, or if export was made to an agent of the participant, the name and address of the agent.

(3) If the commodity is exported by rail or truck, one copy of the bill of lading certified by the exporter as being a true copy, an authenticated landing certificate or similar document issued by an official of the government of the importing country showing the kind and quantity of commodity, the place and date of entry into the importing country, rail or truck identification, and the name and address of both the exporter and the participant, or if export was made to an agent of the participant, the name and address of the agent.

(4) If the consignee shown in the document provided for in paragraph (c) of this section is other than the participant named in the commodity agreement, the exporter shall furnish such additional information as the Treasurer, CCC, may request to show that export was made in accordance with the instructions of, or the export sale contract with the participant.

(5) For commodities transshipped through Canada via the Great Lakes or the St. Lawrence River, the exporter shall certify that the commodity transshipped was produced in the United States.

(6) A statement from a U.S. bank showing that the documents required under the letter of credit established by the participant in favor of the exporter for that portion of the export value of the commodity for which the participant will pay with the participant's own resources have been received by the U.S. bank and such documents are in order. If a letter of credit was not established by the participant in favor of the exporter, such other evidence acceptable to the Treasurer, CCC, showing that the participant, or the participant's agent, has accepted the commodity exported.

(7) If the exporter is unable to supply documentary evidence of export as specified in this section, the exporter may submit such other documentary evidence as may be acceptable to the Treasurer, CCC.

(d) On receipt of the documents described in paragraphs (b) and (c) of this section, the Treasurer, CCC, will promptly pay to the exporter, the amount of the account receivable for which CCC will finance.

(e) If an acceptable application for disbursement and the supporting documents described in paragraphs (b) and (c) of this section have not been received by the Treasurer, CCC, within 45 days from the date of delivery, or any extension thereof, the commodity agreement shall be null and void.

§ 1492.32 Assignments.

The exporter shall not assign any claim or rights or any amounts payable under the commodity agreement, in whole or in part, without written approval of the Controller, CCC.

§ 1492.33 Covenant against contingent fees.

The exporter warrants that no person or selling agency has been employed or retained to solicit or secure the commodity agreement on an agreement or understanding of a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the exporter for the purpose of securing business. For breach or violation of this warranty, the General Sales Manager shall have the right, without limitation on any other rights the General Sales Manager may have, to cancel the commodity agreement without liability to CCC.

§ 1492.34 Exporter's records and accounts.

The General Sales Manager, or the General Sales Manager's authorized representative, shall have access to and the right to examine any directly pertinent books, documents, papers and records of the exporter involving transactions related to the financed export credit sale until expiration of three years from the date the last export was made under the commodity agreement.

MISCELLANEOUS PROVISIONS

§ 1492.35 Use of representatives.

The participant may designate one or more representatives or agents who may be given authority to request purchase authorizations under the project agreement on behalf of the participant and to execute any and all documents required to be furnished to the General Sales Manager by the participant.

§ 1492.36 Successors to rights of CCC.

If, by operation of any law of the United States or by virtue of assignment, any agency of the Government of the United States succeeds to the rights and obligations of CCC under a project agreement, such agency shall be deemed to be CCC for purposes of the project agreement.

§ 1492.37 Applicable law.

The project agreement shall be deemed to be a contract made under the laws of the United States and shall be governed by and construed in accordance with such laws.

§ 1492.38 Notice.

Any notice, request, or communication made by the General Sales Manager, CCC, or by the participant pursuant to the project agreement or by the exporter pursuant to the commodity agreement shall be in writing and shall be deemed to have been duly made to the other party when received by such other party by hand or by mail, telegram, cable, radiogram, or other method.

§ 1492.39 Officials not to benefit.

No member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of the project agreement with the participant or to the commodity agreement with the exporter or to any benefit that may arise therefrom, but this provision shall not be construed to extend to the project agreement or to the commodity agreement if made with a corporation for its general benefit.

§ 1492.40 Purchasing agents employed by the participant.

Prior to entering into any agreement for the services of a United States person or firm as its agent to handle procurement of the commodities to be financed under the project agreement, the participant shall submit the name of the proposed purchasing agent and the agent agreement to the General Sales Manager for approval. The participant shall also obtain the approval of the General Sales Manager of any amendments to such agent agreement. The General Sales Manager will notify the participant in writing of its approval or disapproval of the proposed purchasing agent and of the proposed agent agreement or amendment thereto. A copy of the executed agent agreement and any amendment shall be furnished to the General Sales Manager.

§ 1492.41 Waiver.

Any failure or delay by CCC to exercise any of its rights, in whole or in part, under a project agreement or under a commodity agreement shall not constitute a waiver of any of such rights.

§ 1492.42 English language.

All documents, opinions, and certificates required to be furnished by the participant under a project agreement shall be furnished without cost to the General Sales Manager or to CCC, and, if not in the English language shall be accompanied by certified English translations.

§ 1492.43 Communications.

(a) *Project agreements.* (1) Unless otherwise provided, all written applications, requests, notifications, or communications by the participant pertaining to the project agreement shall be addressed to the General Sales Manager, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, DC 20250.

(2) Information to be furnished in an application for a project agreement, financing terms and interest rates currently in effect may be obtained from the General Sales Manager at the address provided in paragraph (a)(1) of this section.

(3) The participant shall make payment of the principal and interest and all other payments required to be made to CCC, as agreed to by CCC and the participant, to the Treasurer, Commodity Credit Corporation, U.S. Department of Agriculture, Washington, DC 20250, unless otherwise instructed by CCC in writing.

(b) *Commodity agreements.* (1) Unless otherwise provided, all applications, both telephone and written, notifications, or communications by the exporter pertaining to the commodity agreement shall be addressed to the General Sales Manager, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, DC 20250.

(2) The exporter shall forward documents for financing to the U.S. Department of Agriculture, Commodity Credit Corporation, P.O. Box 2415, Washington, DC 20013.

PART 1493—CCC EXPORT CREDIT GUARANTEE PROGRAM (GSM-102) AND CCC INTERMEDIATE EXPORT CREDIT GUARANTEE PROGRAM (GSM-103)

Subpart A—Guaranteeing Against Defaults by Foreign Banks

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Subpart A—Guaranteeing Against Defaults by Foreign Banks

AUTHORITY: Sec. 5(f), Pub. L. 80-89, 62 Stat. 1072, as amended by Sec. 405(a), Pub. L. 98-623, 98 Stat. 3409 (15 U.S.C. 714c(f)); Sec. 4(b), Pub. L. 89-808, 80 Stat. 1537, as amended by Sec. 101, Pub. L. 95-501, 92 Stat. 1685 and Sec. 1131, Pub. L. 99-198, 99 Stat. 1486 (7 U.S.C. 1707a(b)); 15 U.S.C. 714b(d).

SOURCE: 45 FR 64898, Oct. 1, 1980, unless otherwise noted.

GENERAL

§ 1493.1 General statement.

(a) This part contains the regulations governing the Commodity Credit Corporation (CCC) Export Credit Guarantee Program (GSM-102) and the CCC Intermediate Export Credit Guarantee Program (GSM-103). Exporters of U.S. agricultural commodities usually require importers to guarantee payment of the selling price of commodities sold to such importers. The guarantee may be in the form of:

(1) An irrevocable foreign bank letter of credit issued in favor of the exporter under which the foreign bank would make payments as such payments become due; or

(2) An irrevocable foreign bank letter of credit in favor of the exporter which is supported by a related obligation under which the foreign bank would make payment as such payments become due. The exporter may assign the account receivable to a U.S. bank or financial institution so that the exporter may realize the proceeds of the sale prior to the deferred payment dates, as called for in the export credit sale. GSM-102 and GSM-103 are designed to protect the exporter or the exporter's assignee against loss from defaults due to commercial and noncommercial risks under the foreign bank letter of credit or related obligation. By transferring some of the risk of loss due to defaults by foreign banks from the exporters or their assignees to CCC, GSM-102 and GSM-103 are intended to: facilitate exportation; forestall or limit declines in exports; permit exporters to meet competition from other countries; and increase commercial exports of U.S. agricultural commodities.

(b) GSM-102 and GSM-103 will be administered by the General Sales Manager, Foreign Agricultural Service (FAS), U.S. Department of Agriculture.

(c) The provisions of Pub. L. 83-664 (Cargo Preference Act) are not applicable to the shipment of commodities covered under GSM-102 and GSM-103.

(d) GSM-102 and GSM-103 may be supplemented by USDA announcements.

[Amdt. 2, 51 FR 26541, July 24, 1986]

§ 1493.2 Definition of terms.

(a) "Assistant General Sales Manager" means the Assistant General Sales

Manager, Export Credits, Foreign Agricultural Service, or designee of the Assistant General Sales Manager.

(b) "CCC" means the Commodity Credit Corporation, U.S. Department of Agriculture.

(c) "Date of export" means the onboard date of an ocean bill of lading or airway bill or onboard ocean carrier date of an intermodal bill of lading, or if exported by rail or truck, the date of entry shown on an authenticated landing certificate or similar document issued by an official of the government of the importing country.

(d) "Date of sale" means the earliest date the exporter has knowledge that a contractual obligation exists with the importer under which a firm dollar-and-cent price has been established or a mechanism to establish the price has been agreed upon.

(e) "Eligible interest" means the maximum rate of interest which CCC agrees to pay the exporter, or the exporter's assignee, as indicated in CCC's payment guarantee, including any amendments to the payment guarantee. The payment guarantee may provide for automatic adjustments in the eligible interest during the term of the credit. Eligible interest shall not exceed the average investment rate of the most recent Treasury 52-week bill auction as announced by the Department of Treasury at the time CCC determines the eligible interest or at the time the eligible interest is adjusted.

(f) "Exported value" means the value of the commodity exported under the payment guarantee, f.a.s. or f.o.b. basis point of export, except that "exported value" may, upon approval by CCC, include freight costs for the commodity if the commodity is sold on c&f basis, and freight and marine and war risk insurance cost for the commodity if the commodity is sold on c.i.f. basis.

(g) "Exporter" means an individual, group of individuals, partnership, corporation, association, cooperative, or any other entity that is:

(1) Financially responsible; (2) engaged in the business of buying or selling commodities for export and for this purpose maintains a bona fide business office in the United States, its territories or possessions, and has someone on whom service of judicial process may be had within the United States; and (3) not suspended or debarred from contracting with or participating in any program administered by CCC on the date of issuance of the payment guarantee.

(h) "FAS" means the Foreign Agricultural Service, U.S. Department of Agriculture.

(i) "Foreign bank letter of credit" means: (1) An irrevocable commercial letter of credit providing for deferred payments and issued in favor of the exporter by a CCC-approved banking institution pursuant to an export credit sale requiring payment in U.S. dollars; or (2) an irrevocable commercial letter of credit issued in favor of the exporter by a CCC-approved banking institution pursuant to an export credit sales requiring payment in U.S. dollars, which is supported by a related obligation providing for deferred payment in U.S. dollars from the banking institution issuing the letter of credit to a financial institution in the United States.

(j) "GSM-102" means the program under this subpart, also referred to as the "Export Credit Guarantee Program", under which the payment guarantees issued are for a period not exceeding 3 years from the date of export.

(k) "GSM-103" means the program under this subpart, also referred to as the "Intermediate Export Credit Guarantee Program", under which the payment guarantees issued are for a period exceeding 3 years but not exceeding 10 years from the date of export.

(l) "Guaranteed value" means the maximum amount CCC agrees to pay the exporter under CCC's payment guarantee, exclusive of interest. The guaranteed value will be shown in the payment guarantee.

(m) "Importer" means a foreign buyer who enters into an export credit sale contract with a U.S. exporter, or with an intervening purchaser, providing for shipment directly from the United States to the foreign buyer.

(n) "Payment guarantee" means the written agreement under which CCC undertakes to protect the exporter or the exporter's assignee from losses due to nonpayment by a foreign bank under the foreign bank's letter of credit supporting the exporter's export credit sales contract or under the foreign bank's obligation owed to the exporter or the exporter's assignee related to the foreign bank's letter of credit issued in favor of the U.S. exporter.

(o) "Port value" means the total value of the export credit sale, less any discounts or allowances, f.a.s. or f.o.b. basis at U.S. points of export. Port value may, upon approval by CCC, include freight costs for the commodity if the export credit sale is made c&f basis, less any discounts or allowances, and freight and marine and war risk insurance for the commodity if the commodity is sold on c.i.f. basis, less any discounts or allowances. Such values shall include the amount of the upward loading tolerance, if any, as provided for by the export credit sales contract.

(p) "USDA announcement" means an announcement issued by the U.S. Department of Agriculture supplementing these regulations. An announcement may include identification of eligible agricultural commodities and countries, dollar limitation of CCC exposure in a country and other information.

[45 FR 64898, Oct. 1, 1980, as amended by Amdt. 2, 51 FR 26541, July 24, 1986; 52 FR 17550, May 11, 1987]

GUARANTEE AGAINST DEFAULTS

§ 1493.3 Application for payment guarantee.

(a) An exporter shall submit a written application (e.g., letter, telex, or TWX) for a payment guarantee to the USDA office specified in § 1493.15 requesting coverage under GSM-102, if the credit terms are three years or less, or GSM-103, if the credit terms are more than three years but not more than 10 years. An application may be made by telephone but, if so made, it must be confirmed in writing. An application shall include the full business name and address of the exporter and the following:

(1) Name of the destination country.

(2) Name and address of importer.

(3) Intervening purchaser, if any, and a statement that the commodity will be shipped directly to the foreign importer in the destination country.

(4) Date of sale.

(5) Exporter's sale number.

(6) Delivery period.

(7) Kind and description of the commodity.

(8) Quantity.

(9) Contract loading tolerance.

(10) Port value, including upward loading tolerance.

(11) Guaranteed value.

(12) Guarantee fee.

(13) The name and address of the foreign bank issuing the letter of credit.

(14) Estimated payment schedule for each shipment to be made under the export credit sale showing estimated principal payment due dates and amounts due.

(b) An application for a payment guarantee may be approved as submitted, approved with modifications, or rejected by the Assistant General Sales Manager. In the event the application is approved, the Assistant General Sales Manager shall cause a payment guarantee to be issued in favor of the U.S. exporter.

[45 FR 64898, Oct. 1, 1980, as amended by Amdt. 2, 51 FR 26541, July 24, 1986]

§ 1493.4 Payment guarantee.

(a) The payment guarantee shall provide that CCC will pay the U.S. exporter or the exporter's assignee in U.S. dollars for losses resulting from the failure of the foreign bank which issues the bank letter of credit securing the export credit sale to honor drafts drawn upon it or otherwise to remit amounts properly due the exporter or the exporter's assignee.

(b) The payment guarantee shall become effective on the date(s) of export(s) of the agricultural commodities sold by the exporter to the importer and continue in force with respect to payments due during the period specified in the payment guarantee or amendment thereof but in any event not exceeding (i) 36 months for credits covered by GSM-102 and (ii) 120 months for credits covered by GSM-103, from the date(s) of such export(s). Exports made prior to receipt by CCC of a telephonic or written application for a payment guarantee or exports made after the final date for export shown on the payment guarantee or amendment thereof are ineligible for GSM-102 or GSM-103 coverage, except where it is determined by the Assistant General Sales Manager to be in the interest of CCC.

(c) The payment guarantee may contain such additional terms, conditions, and limitations as are deemed necessary or desirable by the Assistant General Sales Manager.

(d) The payment guarantee may be amended by the parties thereto, provided that such amendment is in conformity with GSM-102 and GSM-103 at the time the amendment is approved. Amendments may include a change in the credit period or an extension of time to export. Any amendment to the payment guarantee may be subject to an increase in the guarantee fee. The assignee may submit corrections to the payment schedule.

(e) The assignee shall not be a branch, agency or the home office of the foreign bank issuing the letter of credit.

[45 FR 64898, Oct. 1, 1980, as amended by Amdt. 2, 51 FR 26541, July 24, 1986]

GUARANTEE RATES AND FEES

§ 1493.5 Guarantee rates.

The payment guarantee rates will be based upon the length of the payment terms provided by the export credit sale contract, the degree of risk that CCC assumes as determined by CCC, and any other factors which CCC believes should be considered. Guarantee rates charged by CCC under GSM-102 and GSM-103 will be available upon request from the USDA office specified in § 1493.15.

[45 FR 64898, Oct. 1, 1980, as amended by Amdt. 2, 51 FR 26542, July 24, 1986]

§ 1493.6 Guarantee fee.

(a) The guarantee fee will be computed on the basis of the guarantee rate and the guaranteed value.

(b) The exporter shall remit, with his written application (e.g., letter, telex, or TWX), the full amount of the fee. If the application is submitted by telephone, final approval will not be given until the fee and a written application have been received by CCC. Approval of the application will be final and refund of the guarantee fee will not be made after approval unless the Assistant General Sales Manager determines that such a refund will be in the interest of Commodity Credit Corporation.

(c) If the application for a payment guarantee is not approved or is approved only for a part of the coverage requested, a full or pro rata refund of the remittance will be made. The guarantee fee shall be made payable to CCC and mailed to the office specified in § 1493.15.

DOCUMENTS REQUIRED AFTER EXPORT

§ 1493.7 Evidence of export.

(a) The exporter shall provide a written report to the office specified in § 1493.15 within 30 calendar days following each export covered under the payment guarantee. This report shall include the following:

(1) Payment guarantee number.

(2) Date of export.

(3) Exporter's sale number.

(4) Exported value.

(5) Kind, quantity, and description of the commodity exported.

(6) Statement that the agricultural commodities of the grade, quality, and quantity called for in the exporter's sales contract with the foreign importer have been exported to the country specified in the payment guarantee.

(7) A statement that the exporter has documents evidencing the obligation of the foreign importer and that such documents will be retained until three years after the final installment due date as called for in the payment guarantee.

(8) A statement that a letter of credit has been opened in favor of the exporter by the foreign bank shown in the payment guarantee to cover the port value of the commodity exported.

(9) A final payment schedule showing the payment due dates and the amounts due, separately for both the principal and the interest for which credit has been extended to the importer. If the interest to be paid is

based on a variable rate, estimated interest amounts may be shown.

(b) If the report required by paragraph (a) of this section is not received by CCC within 30 calendar days after the date of the export, the payment guarantee shall become null and void with respect to defaults in payment applicable to such export. This provision may be waived by the Assistant General Sales Manager, if it is determined to be in the interest of CCC.

LOSSES CAUSED BY DEFAULTS

§ 1493.8 Notice of defaults.

(a) If the foreign bank issuing the letter of credit fails to make a remittance pursuant to the terms of the foreign bank letter of credit or related obligation, the exporter or the exporter's assignee shall notify CCC at the address indicated in § 1493.11(b) by phone or wire as soon as possible, but not later than 10 calendar days, after the due date, or any extension thereof by the Treasurer, or Assistant Treasurer, CCC in order to file a claim for that payment in accordance with paragraph (b) of this section. If made by phone it must be confirmed in writing. The notice shall include the payment guarantee number, the amount due, the date of refusal to pay and reason for failure to pay, if known.

(b) Within 30 days after the notice of default, or any extension thereof by the Treasurer, of Assistant Treasurer, CCC, the exporter or the exporter's assignee shall file a claim for loss to the Treasurer, CCC, with the following information and documents:

(1) Payment guarantee number.

(2) A certification that the scheduled payment has not been received.

(3) A copy, certified as true and correct by the exporter or the exporter's assignee, of each of the following:

(i) Foreign bank letter of credit securing the export credit sale and, if applicable, the obligation owed by the foreign bank to the assignee U.S. bank which is related to the foreign bank's letter of credit issued in favor of the exporter.

(ii) Ocean carrier or intermodal bill(s) of lading with onboard ocean carrier date for each shipment, or airway bill, or if exported by rail or truck, landing certificate or similar document.

(iii) Invoice(s) showing the exported value. If there is an intervening purchaser, both the exporter's invoice to the intervening purchaser and the invoice to the foreign buyer should be included.

(iv) An instrument, in form and substance satisfactory to CCC, subrogating to CCC their respective rights for the amount of payment in default under the applicable export credit sale.

(c) A claim for a loss by the exporter or the exporter's assignee shall not be honored if it is made later than six months from the date of default.

[45 FR 64898, Oct. 1, 1980, as amended by Amdt. 2, 51 FR 26542, July 24, 1986]

§ 1493.9 Payment of loss.

(a) Upon receipt of the information and documents in good order, as required under § 1493.8, CCC shall determine whether or not a loss has occurred for which CCC is liable under the applicable payment guarantee and these regulations. If CCC determines that it is liable to the exporter and/or the exporter's assignee, CCC will remit to the exporter or the exporter's assignee the amount of the combined principal and interest loss covered by the payment guarantee plus interest at the latest average investment rate of the most recent Treasury 52-week bill auction as announced by the Department of Treasury as of the date of default. Interest shall accrue beginning with the first day after the exporter's or the exporter's assignee's claim was received by CCC and continuing to the date payment is made by CCC.

(b) CCC's maximum liability will be limited to the lesser of (1) the guaranteed value as shown in the payment guarantee plus eligible interest or (2) the percentage of the exported value as specified in the payment guarantee plus eligible interest.

(c) CCC shall only honor claims for losses on amounts not paid as scheduled. CCC shall not honor claims for amounts due under an accelerated payment clause in the export credit sales contract, the foreign bank's letter of credit, or any obligation owed by the foreign bank to the assignee U.S. bank which is related to the foreign bank's letter of credit issued in favor of the exporter, unless it is determined to be in the interest of CCC by the Assistant General Sales Manager. Notwithstanding the foregoing, CCC, at its option may declare the entire amount of the unpaid balance plus accrued interest in default and make payment to the exporter or the exporter's assignee in addition to such other claimed amount as may be due from CCC.

(d) Notwithstanding any other provision of the regulations set forth in this subpart to the contrary, with regard to commodities exported to which the payment guarantee is applicable, CCC will not hold the assignee responsible or take any action or raise any defense against the assignee for any action, omission or statement by the exporter over which the assignee has no control provided that:

(1) The exporter complies with the reporting requirements under § 1493.7 and

(2) The exporter or the exporter's assignee furnishes the statements and documents specified in § 1493.8.

[45 FR 64898, Oct. 1, 1980, as amended at 45 FR 78622, Nov. 26, 1980; Amdt. 2, 51 FR 26542, July 24, 1986]

§ 1493.10 Recovery of losses.

(a) Upon payment of loss to the exporter or the exporter's assignee, CCC will notify the importer and/or the foreign bank of CCC's rights under the subrogation agreement to recover all monies in default.

(b) In the event monies for the defaulted payment are received by the exporter or the exporter's assignee from the importer, foreign bank or any other source whatsoever, such monies shall be immediately paid to the Treasurer, CCC.

(c) Recoveries made by CCC from the importer or foreign bank and recoveries received by CCC from the exporter or the exporter's assignee or any other source shall be allocated by CCC to the exporter or the exporter's assignee and CCC on a pro rata basis as their respective interest may appear. The respective interest of each party shall be determined on a pro rata basis, based on the combined amount of principal, plus interest.

(d) Notwithstanding any other terms of the payment guarantee, the exporter shall be liable to CCC for any amounts paid by CCC under the payment guarantee when and if it is determined by CCC that the exporter has been or is in breach of any contractual obligation, certification or warranty made by the exporter for the purpose of obtaining the payment guarantee or in fulfilling obligations under GSM-102 or GSM-103, and the exporter's assignee shall be liable to CCC for any amounts paid by CCC under the payment guarantee when and if it is determined by CCC that the exporter's assignee has not fulfilled any of the assignee's obligations under GSM-102 or GSM-103.

(e) Upon payment of a claim to the exporter or the exporter's assignee, the exporter or the exporter's assignee shall cooperate with CCC to effect recoveries from the foreign bank and/or the importer.

[45 FR 64898, Oct. 1, 1980, as amended by Amdt. 2, 51 FR 26542, July 24, 1986]

MISCELLANEOUS PROVISIONS

§ 1493.11 Assignment.

(a) The exporter may make an assignment of the proceeds payable by CCC under the payment guarantee or the rights thereto only to a bank or other financing institution in the United States. The assignment shall cover all amounts payable under the payment guarantee not already paid and shall not be made to more than one party, and shall not be subject to further assignment, unless approved in advance by CCC. Any such assignment may be made to one party as agent or trustee for two or more parties participating in the financing.

(b) An original and two copies of the written notice of assignment signed by the parties thereto must be filed by the assignee with the Treasurer, CCC, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013.

(c) Receipt of the notice of assignment shall be acknowledged by an officer of CCC.

§ 1493.12 Covenant against contingent fees.

The exporter warrants that no person or selling agency has been employed or retained to solicit or secure the payment guarantee or that there is any agreement or understanding for commission, percentage, brokerage, or contingent fee, except in the case of bona fide employees or bona fide established commercial or selling agencies maintained by the exporter for the purpose of securing business. For breach or violation of this or other obligations or warranties undertaken by the exporter in regard to a GSM-102 or GSM-103 payment guarantee, CCC shall have the right, notwithstanding other rights provided under these regulations, to annul coverage for any commodities not yet exported and/or to proceed against the exporter.

[45 FR 64898, Oct. 1, 1980, as amended by Amdt. 2, 51 FR 26542, July 24, 1986]

§ 1493.13 Officials not to benefit.

No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of the payment guarantee or to any benefit that may arise therefrom, but this provision shall not be construed to extend to the payment guarantee if made with a corporation for its general benefit.

§ 1493.14 Exporter's records and accounts.

Authorized officials of USDA shall have access to and the rights to examine any pertinent books, documents, papers, and records of the exporter and/or the exporter's assignee involving transactions related to the export credit sale covered by the payment guarantee until 3 years after expiration of the coverage of the payment guarantee.

(Approved by the Office of Management and Budget under control number 0551-0004)

[45 FR 64898, Oct. 1, 1980, as amended at 47 FR 746, Jan. 7, 1982]

§ 1493.15 Communications.

Unless otherwise provided, written requests, notifications, or communications concerning the payment guarantee shall be addressed to the Assistant General Sales Manager, Export Credits, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, DC 20250.

§ 1493.16 Alternative satisfaction of payment guarantees.

CCC may, upon agreement of the exporter (or if the proceeds payable under the payment guarantee have been properly assigned, then the exporter's assignee), establish procedures, terms and conditions for the satisfaction of CCC's obligations under a payment guarantee other than those provided for in this subpart if CCC determines that those alternative procedures, terms and conditions are appropriate in rescheduling the debts arising out of any transaction covered by the payment guarantee and would not result in CCC paying more for an obligation than the amount of CCC's obligation.

[Amdt. 2, 51 FR 26542, July 24, 1986]

§ 1493.17 OMB Control Number assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in this regulation (7 CFR Part 1493, Subpart A) have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0551-0004.

[Amdt. 2, 51 FR 26542, July 24, 1986]

PART 1495—DISPOSITION OF AGRICULTURAL COMMODITIES UNDER THE CCC BARTER PROGRAM

Sec.

1495.1 General statement.
1495.2 Procurement by or for U.S. Government agencies (supply barters).
1495.3 Procurement for the national and supplemental stockpiles (stock pile barters).
1495.4 Agricultural commodities—acquisition and price.
1495.5 Eligible export destinations.
1495.6 Proof of exportation to and entry in eligible destination.
1495.7 Eligible contractors.
1495.8 Uniform barter contractual provisions.

AUTHORITY: Secs. 4(d) and (h) and 5 (d) and (f), 63 Stat. 1070, as amended; sec. 302, 68 Stat. 458, as amended; sec. 303, 68 Stat. 459, as amended; sec. 206, 70 Stat. 200, as amended; 15 U.S.C. 714b (d) and (h), 714c (d) and (f); 7 U.S.C. 1431; 7 U.S.C. 1692; 7 U.S.C. 1856.

SOURCE: 34 FR 19496, Dec. 10, 1969, unless otherwise noted.

§ 1495.1 General statement.

The barter program is administered on behalf of CCC by the Office of the Assistant Sales Manager, Barter, Export Marketing Service, U.S. Department of Agriculture, Washington, DC 20250 (hereinafter called Office of Barter). Under this program, exports of U.S. agricultural commodities are used to finance procurement of materials, equipment, goods, and services required from foreign sources by U.S. Government agencies and foreign procurement of strategic and other materials for stockpiling. The primary objectives of the barter program are: (a) To develop and expand foreign markets for U.S. farm products; (b) to improve the U.S. balance of payments position; (c) to procure strategic materials to meet stockpiling goals; and (d) to procure strategic materials in excess of stockpile goals where this is in the best interest of the United States when measured against other alternatives, such as taking foreign currencies in payment for agricultural commodities exported to foreign countries. In the formulation of barter export requirements, primary consideration is given to increasing total commercial exports of agricultural commodities from the United States.

§ 1495.2 Procurement by or for U.S. Government agencies (supply barters).

Procurement of goods or services abroad through the barter program for the use of other U.S. Government agencies is undertaken at the request of the Government agency needing the goods or services. Three types of barter arrangements may be used in making procurements for such U.S. Government agencies, i.e., supplier type, payment type, and direct-procurement type. Copies of invitations for offers under all three types of barter arrangements may be obtained from the Office of Barter.

(a) The supplier type barter arrangement involves the issuance of invitations by procurement offices of the U.S. Government agency (such as the Department of Defense), for offers from foreign suppliers of designated goods or services, both on a cash basis and on a barter basis for agricultural commodities. The lowest responsive offer on a barter basis is accepted by the procurement office unless it exceeds the lowest responsive offer on a cash basis, in which latter event CCC determines whether or not to absorb the excess cost. If an offer on a barter basis is accepted, the foreign supplier designates a U.S. firm with which CCC may enter into a barter contract for the export of the agricultural commodities representing payment for the goods or services to be supplied to the procuring agency. The foreign supplier is paid by the barter contractor for goods or services furnished to the procuring agency pursuant to arrangements between the two private parties. Under an assignment of payments made by the supplier, the procuring agency in turn pays to CCC the value of the goods or services supplied to such agency. Prior to the issuance of the invitation for offers by the procuring agency, information as to the proposed procurement is made available by the Office of Barter, for interested U.S. firms, in the Information Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, 14th Street and Independence Avenue SW, Washington, DC 20250.

(b) The payment type barter arrangement involves funding of certain procurements to be made abroad by other Government agencies and is initiated following request from a Government agency to CCC that it generate funds under the barter program for use in effecting such procurements abroad. CCC invites offers from eligible contractors to enter into a contract for the deposit, in accordance with the directions of the Government agency making the procurement, of funds needed to effect the procurement, and for the export, in accordance with the terms of the barter contract, of the agricultural commodities representing payment therefor. Offers are evaluated on the basis of the lowest cost to CCC and such other factors as may be stated in the invitation for offers. Notice of invitations for offers is given by USDA press release.

(c) The direct-procurement type barter arrangement involves the issuance by CCC of invitations for offers from eligible contractors to enter into a contract to supply designated goods or services and to export, in accordance with the terms of the barter contract, the agricultural commodities representing payment therefor. The invitations for such offers are issued following a request from a U.S. Government agency to CCC to undertake a procurement of designated goods or services from overseas sources. Offers are evaluated on the basis of the lowest price, delivered at destination, and other factors relating to the performance of the contract by the supplier. Notice to the public of invitations for such barter offers is given by USDA press release.

§ 1495.3 Procurement for the national and supplemental stockpiles (stock pile barters).

CCC procures for the national and supplemental stockpiles, through barter arrangements, strategic and other materials produced abroad. In the case of materials for the national stockpile, listings of the kinds and quantities of materials to be so procured are transmitted to the Office of Barter by the General Services Administration. The materials, and the quantities and qualities thereof, to be procured are determined pursuant to section 2 of the Strategic and Critical Materials Stock Piling Act (60 Stat. 596). In the case of materials for the supplemental stockpile, the kinds and quantities to be procured are determined from time to time by the Secretary of Agriculture, from among materials which have been designated by the President as eligible for such barter procurement. In making this determination, the following factors (among others) are considered: (a) Whether such procurement will reduce the volume of more desirable barter procurements that can be accomplished; (b) whether it is more advantageous to the United States to take a useful material in exchange for agricultural commodities than to acquire additional foreign currencies for them; and (c) whether the international economic or foreign policy interests of the United States will be furthered. The Secretary of Agriculture will approve barter procurement of materials for the supplemental stockpile only when he finds it is in the best interest of the United States.

Barter procurement of foreign-produced materials for stockpiling begins with the issuance of an invitation for offers to enter into a contract for supplying the designated material and exporting an equal value of eligible U.S. agricultural products. Offers are evaluated on the basis of price and such other factors as may be stated in the invitation for offers. Notice of such invitations for offers is given by USDA press release.

§ 1495.4 Agricultural commodities—acquisition and price.

Barter contracts provide that the barter contractor will be paid in a quantity of agricultural commodities from CCC inventories having a specified total value, such agricultural commodities to be acquired from CCC by the barter contractor at prices established pursuant to published announcements of CCC, unless otherwise specified in the contract. If the barter contract involves procurements other than for the supplemental stockpile, the barter contract may contain provisions pursuant to which the barter contractor may, at his option, acquire all or any part of the agricultural commodities either from CCC inventories or from private stocks. The barter contract will either designate or provide for the designation of the agricultural commodities thus to be acquired and exported. Generally, the barter contractor may acquire from CCC inventories or from private stocks, if the contract so provides, those agricultural commodities designated in the CCC Monthly Sales List (published as a Notice in the FEDERAL REGISTER) as available or eligible in connection with barter contracts. CCC will reimburse the barter contractor for the value, determined as provided in published announcements of CCC, of those agricultural commodities exported which were acquired from private stocks. Copies of all pertinent announcements may be obtained from the Office of Barter. If the agricultural commodity acquired from private stocks is one for which a CCC export payment program is in effect, export under the barter contract generally qualifies for payment under the export payment program if such export also meets the requirements of the export payment program.

§ 1495.5 Eligible export destinations.

Agricultural commodities exported under barter contracts may be exported only to those countries which are eligible to receive barter exports. Limitations on the countries to which barter exports may go are necessary to provide reasonable assurance that such exports will increase total commercial sales and will not unduly disrupt world agricultural prices. The countries eligible to receive exports of such commodities and the conditions under which particular commodities may be exported to specified countries are set forth in each barter contract. Under barter contracts involving materials for the supplemental stockpile, the agricultural commodities must be exported, as provided in the barter contract, to the country from which the foreign-produced material originates.

§ 1495.6 Proof of exportation to and entry in eligible destination.

The barter contractor must furnish to CCC within the time specified in the contract such evidence as CCC may require showing that the agricultural commodities applied to the contract were exported to and received in a country or area designated as an eligible destination under the contract. Failure to furnish such evidence within the time specified is prima facie evidence that the commodity was exported to an ineligible destination.

§ 1495.7 Eligible contractors.

Any responsible U.S. citizen or company may qualify as a barter contractor. A partnership or other unincorporated legal entity will be considered a U.S. company if its principal place of business is in the United States and at least one of its members is a resident citizen of the United States. A corporation will be considered a U.S. company if it is organized and doing business under the laws of the United States. Provision may be made in the barter contract for the designation by the barter contractor, with approval by CCC, of an agent who, in behalf of the barter contractor, may acquire and export agricultural commodities pursuant to the terms and conditions of the contract. For the purposes of this section, "United States" means any of the 50 states, the District of Columbia, or Puerto Rico.

§ 1495.8 Uniform barter contractual provisions.

Upon acceptance of an eligible contractor's offer to enter into a contract, the Office of Barter prepares for the signature of the parties thereto a contract which sets forth the terms and conditions of the contract between CCC and the contractor. Each contract contains provisions formulated to the needs of the type of barter activity involved and the particular transactions thereunder and incorporates by reference certain uniform barter contractual provisions applicable to the type of barter activity involved. The uniform barter contractual provisions are set forth in Form CCC-111-R (for stockpile barters) and Form CCC-122 (for supply barters), copies of which may be obtained from the Office of Barter.

PART 1496—PROCUREMENT OF PROCESSED AGRICULTURAL COMMODITIES FOR DONATION UNDER TITLE II, PUB. L. 480

Sec.

1496.1 General statement.
1496.2 Administration.
1496.3 Definitions.
1496.4 Issuance of invitations.
1496.5 Consideration of bids.
1496.6 Data to be used.
1496.7 Final contract determinations.

AUTHORITY: Secs. 201, 202 and 203, 68 Stat. 454, as amended (7 U.S.C. 1721, 1722, 1723); sec. 2, 80 Stat. 1537, as amended (7 U.S.C. 1721, 1722, 1723).

SOURCE: 44 FR 27407, May 10, 1979, unless otherwise noted.

§ 1496.1 General statement.

This subpart sets forth the policies, procedures and requirements governing procurement, including allocation to U.S. ports, of processed agricultural commodities for donation under Title II, Pub. L. 480.

[44 FR 27407, May 10, 1979, as amended at 52 FR 5728, Feb. 25, 1987]

§ 1496.2 Administration.

(a) The program will be carried out by the Agricultural Stabilization and Conservation Service (referred to in this subpart as "ASCS") under the general supervision and direction of the Executive Vice President of CCC. The program will be administered through the Office of the Deputy Administrator, Commodity Operations, ASCS, Washington, DC and the Kansas City Commodity Office (KCCO), ASCS, Kansas City, Missouri. Procurement will be in accordance with USDA-1, "General Terms and Conditions for the Procurement of Agricultural Commodities or Services", as amended or revised, applicable provisions of the Federal Acquisition Regulations (48 CFR), and applicable purchase announcements and bid invitations.

(b) Purchases are made to fulfill commodity requests received in KCCO from AID.

[44 FR 27407, May 10, 1979, as amended at 52 FR 5728, Feb. 25, 1987]

§ 1496.3 Definitions.

As used in the regulations in this subpart and in the forms and documents related thereto, the following terms shall have the meaning assigned to them in this section.

(a) "AID" means the Agency for International Development, an agency within the United States Department of State.

(b) "ASCS" means the Agricultural Stabilization and Conservation Service, an agency within the United States Department of Agriculture.

(c) "DACO" means the Deputy Administrator, Commodity Operations, ASCS.

(d) "CCC" means Commodity Credit Corporation, a corporate agency within the United States Department of Agriculture.

(e) "Commodity Office" means the Kansas City Commodity Office, within ASCS, which is responsible for assigned inventory management, acquisition, disposition and related program activities of CCC.

(f) "Lowest landed cost" means the lowest combined total cost of the commodity plus transportation charges to the port of discharge.

[44 FR 27407, May 10, 1979, as amended at 52 FR 5728, Feb. 25, 1987]

§ 1496.4 Issuance of invitations.

From time to time, CCC will issue invitations to purchase or process agricultural products for utilization in the Title II, Pub. L. 480 program. The invitations will specify the contract terms; the closing date for acceptance of bids; the date contracts will be awarded; and other pertinent information. Invitations will be issued at least 10 days prior to the deadline for submission of bids. The bid submission deadlines and contract awards will be timed so not more than one market day elapses between bid opening (bid submission deadline) and contract awards.

§ 1496.5 Consideration of bids.

(a) *Lowest landed cost.* The general principle of awarding contracts that will result in the lowest landed cost will prevail. Lowest landed cost will be calculated on the basis of U.S. flag rates and service for that portion of the commodities being purchased that CCC determines is necessary and practicable to meet cargo preference requirements and on an overall (foreign and U.S. flag) basis for the remaining portion of the commodities being purchased. However, the additional factors set forth in this section will be considered in awarding contracts.

(b) *Availability of ocean service.* (1) Prior to receipt of offers from commodity suppliers, checks will be made of available information from sources including, but not limited to, trade journal newspapers, port publications, steamship publications, and any other available information to determine the availability of appropriate steamship service.

(2) Additional information will be gathered, if necessary by direct contact with the steamship company involved, regarding such factors as the minimum tonnage and/or revenue required to perform the service needed.

(3) Special emphasis will be placed on assuring that under normal conditions the vessels will be calling at U.S. ports to coordinate loading with cargo arrival from suppliers.

(4) Freight rates will be obtained from published ocean tariffs to make cost comparisons between various steamship companies and coastal ranges.

(5) Available service will be analyzed to ensure that the port or coastal range selected for exportation has available ocean transportation service that will provide maximum compliance with the stated policy of AID with regard to the utilization of U.S. and other flag vessels to carry commodities shipped under Title II, Pub. L. 480.

(c) *Adequacy of service.* (1) Prior to the selection of a coastal range or U.S. port from which commodities will be shipped, the ocean transportation service available may be examined to determine adequacy of service. The data utilized may include, but not necessarily be limited to, the past performance of a particular vessel or steamship line in terms of loss and/or damage to cargo when received at destination port; past performance in meeting established delivery schedules, etc. CCC may eliminate from consideration ports or coastal ranges where ocean transportation service is considered inadequate by CCC. When clearly superior service is available at another port or coastal range it may be selected over other service.

(d) *Port performance.* (1) Each port will be contacted prior to bid evaluation to determine their cargo handling capabilities for Title II, Pub. L. 480, commodities when it is reasonably expected that quantities of 1,000 tons or more may be shipped. Allocations to that port will be governed by the minimum or maximum quantities indicated.

(2) Limits of quantities purchased for delivery to a port or coastal range may also be imposed by the amount of vessel space available during the expected delivery and loading period.

(3) Prior to the final selection of a U.S. port from which commodities will be shipped, the adequacy of the port to receive, accumulate, warehouse, handle, store, and protect the cargo will be considered.

(4) Factors which will be considered in this determination will include, but are not necessarily limited to, the adequacy of building structures, proper ventilation, freedom from insects and rodents, cleanliness, and overall good housekeeping and warehousing practices.

(5) When it is determined that the U.S. port is congested, facilities are overloaded, and a vessel would not be able to dock and load cargo without delay, or when labor disputes or lack of labor will prohibit the loading of the cargo onboard a vessel in a timely manner, another coastal range or port will be considered.

(e) *Transit time.* CCC will consider total transit time, as it relates to a final delivery date, in order to satisfy program requirements.

(f) *Great Lakes ports.* In consultation with the Secretary of Transportation, CCC shall take such steps during calendar years 1986–89 as are necessary and practicable to preserve annually the percentage share or metric tonnage, whichever is lower, of Title II, Pub. L. 480 bagged, processed, or fortified commodities exported from Great Lakes ports during 1984, as determined by the Secretary of Agriculture, consistent with the cargo preference requirements of the Merchant Marine Act, 1936, as amended, and without detriment to other port ranges.

[44 FR 27407, May 10, 1979, as amended at 52 FR 5729, Feb. 25, 1987]

§ 1496.6 Data to be used.

(a) CCC will use all available historical and current data as a basis for procurement considerations, including evaluations and decisions regarding the physical facilities and performance of ports. Heavy reliance will be placed upon current port conditions as determined from first hand observations and reports from USDA and other reliable sources.

(b) The primary source of historical data will be documents used in the normal course of conducting business. Sources include contract documents, ocean bills of lading, survey and/or outturn reports made by commercial cargo surveyors, claim settlement agreements, claim payment documents, etc. CCC will utilize only such data and make only those analyses that it believes will provide a valid measure of program performance.

§ 1496.7 Final contract determinations.

The KCCO shall be responsible for making lowest landed cost determinations. KCCO shall provide that information to an Ad Hoc Committee designated by the Administrator, ASCS, to review the lowest landed cost determinations as a result of any or all of the factors referred to herein. If, after the committee makes its review and it is recommended that contracts should be awarded based on the additional factors which would override lowest landed cost determinations, these recommendations will be presented to the Contracting Officer for a final decision. These decisions will be fully documented and explained as to the reasons the lowest landed cost was not selected.

PART 1497—PAYMENT LIMITATION

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1497.4 Timing for determining status of persons.
1497.5 Limitation on the number of entities through which an individual or entity may receive a payment and required notification.
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1497.9 Limited partnerships, corporations and other similar entities.
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1497.24 Scheme or device.
1497.25 Joint and several liability.
1497.26 Equitable adjustments.
1497.27 Appeals.
1497.28 Paperwork Reduction Act assigned number.

AUTHORITY: 7 U.S.C. 1308; 16 U.S.C. 3834.

SOURCE: 53 FR 29571, Aug. 5, 1988, unless otherwise noted.

§ 1497.1 Applicability.

(a) This part is applicable to the following programs and any other programs as may be provided for in individual program regulations:

(1) The annual price support and production adjustment programs for the 1989 and subsequent crops of wheat, feed grains, upland cotton, extra long staple cotton, and rice;

(2) Any program authorized by the Agricultural Act of 1949 under which a gain is realized by the repayment of a loan at a level lower than the original loan level;

(3) The Conservation Reserve Program;

(b) This part shall be applied to the programs specified in paragraph (a) (1) and (2) on a crop year basis and with respect to the program in paragraph (a)(3) on a fiscal year basis.

(c) This part is applicable to rental payments made in accordance with a Conservation Reserve Program contract entered into on or after August 1, 1988. For Conservation Reserve Program contracts entered into on or after December 22, 1987 and before August 1, 1988, the person may elect to have the provisions of this part apply to such a contract by notifying the county committee in writing of such election.

(d) The regulations set forth at Part 795 of this title shall be applicable to Conservation Reserve Program contracts entered into prior to December 22, 1987, and to Conservation Reserve Program contracts entered into on or after such date and before August 1, 1988, if the person has not made the election specified in paragraph (c) of this section.

(e) This part shall be used to determine whether certain individuals or legal entities are to be treated as one person or as separate persons for the purpose of applying the payment limitation provisions which are applicable to the programs specified in paragraph (a) of this section.

(f) In cases in which more than one provision of this part are applicable, the provision which is most restrictive shall apply.

(g) Payments made to public schools with respect to land which is owned by a public school district and payments made to a State with respect to land owned by a State which is used to maintain a public school shall not be subject to the payment limitations.

(h) This part is not applicable to rental payments made in accordance with a Conservation Reserve Program contract if such payments are made to a State, political subdivision, or agency thereof in connection with agreements entered into under a special conservation reserve enhancement program carried out by such State, political subdivision, or agency thereof that has been approved by the Secretary, or a designee of the Secretary.

[53 FR 29571, Aug. 5, 1988, as amended at 53 FR 37707, Sept. 27, 1988]

§ 1497.2 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the Executive Vice President, CCC, and the Administrator, ASCS. In the field, the regulations in this part will be administered by the Agricultural Stabilization and Conservation State and county committees (herein referred to as "State and county committees", respectively).

(b) State executive directors, county executive directors and State and county committees do not have authority to modify or waive any of the provisions of this part.

(c) The State committee may take any action authorized or required by this part to be taken by the county committee which has not been taken by such committee. The State committee may also:

(1) Correct or require a county committee to correct any action taken by such county committee which is not in accordance with this part; or

(2) Require a county committee to withhold taking any action which is not in accordance with this part.

(d) No delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, and the Administrator, ASCS, or a designee, from determining any question arising under this part or from reversing or modifying any determination made by a State or county committee.

(e) The county committee shall make the initial "actively engaged in farming" and "person" determinations within 60 days after the producer files the required forms and any other supporting documentation needed in making such determinations. If the determination is not made within 60 days, the producer will receive a determination for that program year which reflects the determination sought by the producer unless the Deputy Administrator determines that the producer did not follow the farm operating plan which was presented to the county committee for such year.

(f) The county committee shall take into consideration the circumstances involving individuals who have died or become incapacitated during the program year. If the individual dies or is incapacitated before a determination is made that the individual is "actively engaged in farming," the representative of the deceased individual's estate or the incapacitated individual, or other person if necessary, must provide the county committee information that verifies that such individual did make a conscious effort to and would have been determined to be actively engaged in farming if not for the individual's death or incapacitation. If the individual dies or is incapacitated after being determined to be "actively engaged in farming," the county committee shall allow such determination to be in effect for that program year. However, the following year such individual or the individual's estate must meet all necessary requirements in order to be determined to be "actively engaged in farming" for that year.

(g) Data furnished by the producers will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, without it program benefits will not be provided.

§ 1497.3 Definitions.

(a) The terms defined in Part 719 of this chapter shall be applicable to this part and all documents issued in accordance with this part, except as otherwise provided in this section.

(b) The following definitions shall be applicable to this part:

Active Personal Labor. Active personal labor is personally providing physical activities necessary in a farming operation, including activities involved in land preparation, planting, cultivating, harvesting, and marketing of agricultural commodities in the farming operation. Other physical activities include those physical activities required to establish and maintain conserving cover crops or conserving use acreages and those physical activities necessary in livestock operations.

Active Personal Management. Active personal management is personally:

(1) The general supervision and direction of activities and labor involved in the farming operation; or

(2) Providing services (whether performed on-site or off-site) reasonably related and necessary to the farming operation including any of the following:

(i) Supervision of activities necessary in the farming operation, including activities involved in land preparation, planting, cultivating, harvesting, and marketing of agricultural commodities, as well as activities required to establish and maintain conserving cover crops or conserving use acreage and activities required in livestock operations.

(ii) Business-related actions which include discretionary decision-making;

(iii) Evaluation of the financial condition and needs of the farming operation;

(iv) Assistance in the structuring or preparation of financial reports or analyses for the farming operation;

(v) Consultations in or structuring of business-related financing arrangements for the farming operation;

(vi) Marketing and promotion of agricultural commodities produced by the farming operation;

(vii) Acquiring technical information used in the farming operation; or

(viii) Any other management function reasonably necessary to conduct the farming operation and for which service the farming operation would ordinarily be charged a fee.

Capital. Capital consists of the funding provided by an individual or entity to the farming operation in order for such operation to conduct farming activities. In determining whether an individual or entity has contributed capital to the farming operation, such capital must have been derived from a fund or account separate and distinct from that of any other individual or entity involved in such operation. Capital does not include the value of any labor or management which is contributed to the farming operation. A capital contribution may be a direct out-of-pocket input of a specified sum or an amount borrowed by the individual or entity.

(1) With respect to a farming operation conducted by an individual, a joint operation in which the capital is contributed by a member of the joint operation under the provisions of § 1497.8(b), or entity, such capital contributed to meet the requirements of:

(i) Section 1497.6(b) must be contributed directly by the individual or entity and must not be acquired as a result of a loan made to, guaranteed, or secured by:

(A) Any other individual, joint operation, or entity that has an interest in such farming operation.

(B) Such individual, joint operation, or entity by any other individual, joint operation, or entity which has an interest in such farming operation.

(C) Any other individual, joint operation, or entity in whose farming operation such individual, joint operation, or entity has an interest.

(ii) Section 1497.6(d) must be contributed directly by the individual or entity and if acquired as a result of a loan made to, guaranteed, or secured by the individuals, joint operations, or entities provided in items (1)(i)(A) through (1)(i)(C) of this definition, the loan must bear the prevailing interest rate.

(2) With respect to a farming operation conducted by a joint operation in which the capital is contributed by such joint operation under the provisions of § 1497.8(c), such capital contributed to meet the requirements of:

(i) Section 1497.6(b) must be contributed directly by the joint operation and must not be acquired as a result of a loan made to, guaranteed, or secured by:

(A) Any individual, entity, or other joint operation which has an interest in such farming operation, including either joint operation's members.

(B) Such joint operation by any individual, entity, or other joint operation which has an interest in such farming operation.

(C) Any individual, entity, or other joint operation in whose farming operation such joint operation has an interest.

(ii) Section 1497.6(d) must be contributed directly by the joint operation and if acquired as a result of a loan made to, guaranteed, or secured by the individuals, entities, or joint operations provided in items (2)(i)(A) through (2)(i)(C) of this definition, the loan must bear the prevailing interest rate.

Entity. An entity is a corporation, joint stock company, association, limited partnership, irrevocable trust, revocable trust, estate, charitable organization, or other similar organization including any such organization participating in the farming operation as a partner in a general partnership, a participant in a joint venture, a grantor of a revocable trust, or as a participant in a similar organization.

Equipment. Equipment is the machinery and implements needed by the farming operation to conduct activities of the farming operation including machinery and implements involved in land preparation, planting, cultivating, harvesting, or marketing of the crops involved. Equipment also includes machinery and implements needed to establish and maintain conservation cover crops or conservation use acreages and those needed to conduct livestock operations.

(1) With respect to a farming operation conducted by an individual, a joint operation in which the equipment is contributed by a member of the joint operation under the provisions of § 1497.8(b), or entity, such equipment contributed to meet the requirements of:

(i) Section 1497.6(b) must be contributed directly by the individual or entity and must not be acquired as a result of a loan made to, guaranteed, or secured by:

(A) Any other individual, joint operation, or entity that has an interest in such farming operation.

(B) Such individual, joint operation, or entity by any other individual, joint operation, or entity which has an interest in such farming operation.

(C) Any other individual, joint operation, or entity in whose farming operation such individual, joint operation, or entity has an interest.

(ii) Section 1497.6(d) must be contributed directly by the individual or entity and if acquired as a result of a loan made to, guaranteed, or secured by the individuals, joint operations, or entities provided in items (1)(i)(A) through (1)(i)(C) of this definition, the loan must bear the prevailing interest rate.

(2) With respect to a farming operation conducted by a joint operation in which the equipment is contributed by such joint operation under the provisions of § 1497.8(c), such equipment contributed to meet the requirements of:

(i) Section 1497.6(b) must be contributed directly by the joint operation and must not be acquired as a result of a loan made to, guaranteed, or secured by:

(A) Any individual, entity, or other joint operation which has an interest in such farming operation, including either joint operation's members.

(B) Such joint operation by any individual, entity, or other joint operation which has an interest in such farming operation.

(C) Any individual, entity, or other joint operation in whose farming operation such joint operation has an interest.

(ii) Section 1497.6(d) must be contributed directly by the joint operation and if acquired as a result of a loan made to, guaranteed, or secured by the individuals, entities, or joint operations provided in items (2)(i)(A) through (2)(i)(C) of this definition, the loan must bear the prevailing interest rate.

Family Member. The term "family member" means an individual to whom another member in the farming operation is related as lineal ancestor, lineal descendant, or sibling, including spouses of those family members who do not make a significant contribution to the farming operation themselves.

Farming operation. A farming operation is a business enterprise engaged in the production of agricultural products which is operated by an individual, entity, or joint operation which is eligible to receive payments, directly or indirectly, under one or more of the programs specified in § 1497.1. An entity or individual may have more than one farming operation if such individual or entity is a memeber of one or more joint operations.

Irrevocable trust. An irrevocable trust is a trust which:

(1) May not be modified or terminated by the grantor;

(2) The grantor does not have any future, contingent or remainder interest in the corpus of the trust; and

(3) Does not provide for the transfer of the corpus of the trust to the remainder beneficiary in less than 20 years from the date the trust is established except in cases where the transfer is contingent upon the remainder beneficiary achieving majority or is contingent upon the death of the grantor or income beneficiary. All other trusts shall be considered to be revocable trust.

Joint operation. A joint operation is a general partnership, joint venture, or other similar business organization.

Land. Land is farmland consisting of cropland, pastureland, wetland, or rangeland which meets the specific requirements of the applicable program.

(1) With respect to a farming operation conducted by an individual, a joint operation in which the land is contributed by a member of the joint operation under the provisions of § 1497.8(b), or entity, such land contributed to meet the requirements of:

(i) Section 1497.6(b) must be contributed directly by the individual or entity and must not be acquired as a result of a loan made to, guaranteed, or secured by:

(A) Any other individual, joint operation, or entity that has an interest in such farming operation.

(B) Such individual, joint operation, or entity by any other individual, joint operation, or entity which has an interest in such farming operation.

(C) Any other individual, joint operation, or entity in whose farming operation such individual, joint operation, or entity has an interest.

(ii) Section 1497.6(d) must be contributed directly by the individual or entity and if acquired as a result of a loan made to, guaranteed, or secured by the individuals, joint operations, or entities provided in items (1)(i)(A) through (1)(i)(C) of this definition, the loan must bear the prevailing interest rate.

(2) With respect to a farming operation conducted by a joint operation in which the land is contributed by such joint operation under the provisions of § 1497.8(c), such land contributed to meet the requirement of:

(i) Section 1497.6(b) must be contributed directly by the joint operation and must not be acquired as a result of a loan made to, guaranteed, or secured by:

(A) Any individual, entity, or other joint operation which has an interest in such farming operation, including either joint operation's members.

(B) Such joint operation by any individual, entity, or other joint operation which has an interest in such farming operation.

(C) Any individual, entity, or other joint operation in whose farming operation such joint operation has an interest.

(ii) Section 1497.6(d) must be contributed directly by the joint operation and if acquired as a result of a loan made to, guaranteed, or secured by the individuals, entities, or joint operations provided in items (2)(i)(A) through (2)(i)(C) of this definition, the loan must bear the prevailing interest rate.

Payment. A payment includes:

(1) With respect to the programs specified in § 1497.1 paragraphs (a) (1) and (2):

(i) Any part of any payment that is determined by the Deputy Administrator to represent compensation for resource adjustment (excluding land diversion payments) or public access for recreation;

(ii) Any disaster payment made under one or more of the annual programs for a commodity established under the Agricultural Act of 1949;

(iii) Any gain realized by a producer from repaying a loan for a crop of wheat, feed grains, upland cotton, rice, or honey at the rate permitted under section 107D(a)(5), 105C(a)(4), 103A(a)(5), 101A(a)(5), or 201(b)(2), respectively, of the Agricultural Act of 1949, or any gain realized by a producer from repaying a loan for a crop of any other commodity at a lower level established than the original loan level under the Agricultural Act of 1949;

(iv) Any deficiency payment received for a crop of wheat or feed grains under section 107D(c)(1) or 105C(c)(1), respectively, or the Agricultural Act of 1949 as the result of a reduction of the loan level for such crop under section 107D(a)(4) or 105C(a)(3) of the Agricultural Act of 1949;

(v) Any loan deficiency payment received for a crop of wheat, feed grains, upland cotton, or rice under section 107D(b), 105C(b), 103A(b), or 101A(g), respectively, of the Agricultural Act of 1949;

(vi) Any inventory reduction payment received for a crop of wheat, feed grains, upland cotton, or rice under section 107D(g), 105C(g), 103A(g), or 101A(g), respectively, of the Agricultural Act of 1949; and

(2) With respect to the Conservation Reserve Program, annual rental payments.

Permitted Entity. A permitted entity is an entity designated annually by an individual which is to receive a payment, loan, or benefit under a program specified in § 1497.1.

Person. (1) A person is:

(i) An individual, including any individual participating in a farming operation as a partner in a general partnership, a participant in a joint venture, or a participant in a similar entity;

(ii) A corporation, joint stock company, association, limited partnership, irrevocable trust, revocable trust together with the grantor of the trust, estate, or charitable organization, including any such entity or organization participating in the farming operation as a partner in a general partnership, a participant in a joint venture, a grantor of a revocable trust, or as a participant in a similar entity; and

(iii) A State, political subdivision, or agency thereof.

(2) In order for an individual or entity other than an individual or entity who is a member of a joint operation to be considered a separate person for the purposes of this part, in addition to other provisions of this part, the individual or entity must:

(i) Have a separate and distinct interest in the land or the crop involved;

(ii) Exercise separate responsibility for such interest; and

(iii) Maintain funds or accounts separate from that of any other individual or entity for such interest.

(3) With respect to an individual or entity who is a member of a joint operation, such individual or entity will have met the requirements of paragraph (2) of this definition if the joint operation meets the requirements of such paragraph.

(4) Any cooperative association of producers that markets commodities for producers with respect to the commodities so marketed for producers shall not be considered to be a person.

Public School. A public school is a primary, elementary, secondary school, college, or university which is directly administered under the authority of a governmental body or which receives a predominant amount of its financing from public funds.

Related entity. A related entity is an entity in which a member of a farming operation, which consists of two or more entities, has an interest, either directly or indirectly.

Sharecropper. An individual who performs work in connection with the production of the crop under the supervision of the operator and who receives a share of such crop in return for the provisions of such labor.

Significant Contribution. A significant contribution is the provision of the following to a farming operation by an individual or entity:

(1)(i) With respect to land, capital, or equipment contributed by an individual or entity, a contribution which has a value which is equal to at least 50 percent of the individual's or entity's commensurate share of:

(A) The total value of the capital necessary to conduct the farming operation;

(B) The total rental value of the land necessary to conduct the farming operation;

(C) The total rental value of the equipment necessary to conduct the farming operation; or

(ii) If the contribution by an individual or entity consists of any combination of land, capital, and equipment, such combined contribution must have a value which is equal to 30 percent of the individual's or entity's commensurate share of the total value of the farming operation;

(2) With respect to active personal labor, an amount which is the smaller of:

(i) 1,000 hours per calendar year; or

(ii) 50 percent of the total hours which would be required to conduct a farming operation which is comparable in size to such individual's or entity's commensurate share in the farming operation;

(3) With respect to active personal management, activities which are critical to the profitability of the farming operation, taking into consideration the individual's or entity's commensurate share in the farming operation; and

(4) With respect to a combination of active personal labor and active personal management, when neither contribution meets the requirements of paragraphs (2) and (3) of this definition, a combination of active personal labor and active personal management when viewed together which results in a critical impact on the profitability of the farming operation in an amount at least equal to either the significant contribution of active personal labor or active personal management as provided in paragraphs (2) and (3) of this definition.

Substantial Beneficial Interest. A substantial beneficial interest in any entity is an interest of 10 percent or more. In determining whether such an interest equals at least 10 percent, all interests in the entity which are owned by an individual or entity directly or indirectly through such means as ownership of a corporation which owns the entity shall be taken into consideration. In order to ensure that the provisions of this part are not circumvented by an individual or entity, the Deputy Administrator may determine that an ownership interest requirement of less than 10 percent shall be applied to such individual or entity.

Total Value of the Farming Operation. The total value of the farming operation is the total of the costs, excluding the value of active personal labor and active personal management which is contributed by a person who is a member of the farming operation, needed to carry out the farming operation for the year for which the determination is made.

[53 FR 29571, Aug. 5, 1988, as amended at 55 FR 1572, Jan. 17, 1990]

§ 1497.4 Timing for determining status of persons.

(a) Except as otherwise set forth in this part, the status of an individual or entity on April 1 of the current year, or such other date as may be determined and announced by the Deputy Administrator, shall be the basis on which determinations are made in accordance with this part for the year in which the determination is made.

(b) Actions taken by an individual or entity after April 1, or such other date as may be determined and announced by the Deputy Administrator, but on or before the final harvest date of the last program crop in the area, as determined by the Deputy Administrator, shall not be used to determine whether there has been an increase in the number of persons for the current year. Actions taken by a person after April 1, or such other date as may be determined and announced by the Deputy Administrator, but on or before the harvest of the last program crop in the area, shall be used to determine whether there has been a decrease in the number of persons for the current year.

§ 1497.5 Limitation on the number of entities through which an individual or entity may receive a payment and required notification.

(a) An individual shall receive payments under programs specified in § 1497.1 either directly or indirectly from no more than three permitted entities. An individual which receives such payments shall notify the county committee in the county in which such individual maintains a farming operation whether or not the farming operation is to be considered a permitted entity. An individual shall only receive such payments as a result of a farming operation conducted by:

(1) The individual and by no more than two entities in which the individual holds a substantial beneficial interest; or

(2) No more than three entities in which the individual holds a substantial beneficial interest.

(b) Except for entities specified in paragraph (c) of this section, each entity entering into a contract or agreement under programs specified in § 1497.1 shall, by the date the contract or agreement is submitted to the county committee, notify in writing:

(1) Each individual or other entity that acquires or holds an interest in such entity of the requirements and limitations provided in this part; and

(2) The county committee of the name and social security number of each individual and the name and taxpayer identification number of each entity that holds or acquires a substantial beneficial interest in such entity.

(c) Entities shall not be subject to the provisions of paragraph (b) of this section if, as determined by the Deputy Administrator:

(1) Because of the number of members of such entity no member is likely to have a substantial beneficial interest in such entity; and

(2) Such provisions would cause undue financial hardship on such entity.

(d)(1) An individual or entity that holds a substantial beneficial interest in more than the number of permitted entities specified in paragraph (a) of this section, for which a contract or agreement has been submitted to the county committee, shall notify the county committee, in each county in which they conduct a farming operation, in writing of those entities that shall be considered as permitted entities by a date as determined by the Deputy Administrator following the date the contract or agreement was submitted to the county committee.

(2) The remaining entities in which the individual or entity holds a substantial beneficial interest shall be notified that such entity is subject to reductions in the payments earned by the remaining entity. Such a reduction shall be made in an amount that bears the same relationship to the full payment that the individual's interest in the entity bears to all interest in the entity. The remaining entity's members shall have the opportunity to adjust among themselves their proportionate shares of the program benefits in the designated entity or entities before such reductions are made.

(e) If an individual or entity fails to make such a notification as specified in paragraph (d) of this section, all entities in which the individual or entity holds a substantial beneficial interest shall be subject to a reduction in payments in the manner specified in paragraph (d)(2) of this section.

[55 FR 1573, Jan. 17, 1990]

§ 1497.6 General provisions for determining whether an individual or entity is actively engaged in farming.

(a) To be considered a person who is eligible to receive payments with respect to a particular farming operation, a person must be an individual or entity actively engaged in farming with respect to such operation.

(b) Actively engaged in farming means, except as otherwise provided in this part, that the individual or entity, independently makes a significant contribution to a farming operation, of:

(1) Capital, equipment, or land, or a combination of capital, equipment, or land; and

(2) Active personal labor or active personal management, or a combination of active personal labor and active personal management.

(c) In determining if the individual or entity is actively contributing a significant amount of active personal labor or active personal management the following factors shall be taken into consideration:

(1) The types of crops produced by the farming operation;

(2) The normal and customary farming practices of the area; and

(3) The total amount of labor and management which is necessary for such a farming operation in the area.

(d) In order to be considered to be actively engaged in farming an individual or entity specified in § 1497.7 through § 1497.15 must have:

(1) A share of the profits or losses from the farming operation which is commensurate with the individual's or entity's contribution to the operation; and

(2) Contributions to the farming operation which are at risk.

§ 1497.7 Individuals.

(a) An individual shall be considered to be actively engaged in farming with respect to a farming operation if the individual makes a significant contribution of:

(1) Capital, equipment, or land, or a combination of capital, equipment, or land; and

(2) Active personal labor or active personal management, or a combination of active personal labor and active personal management.

§ 1497.8 Joint operations.

(a) Members of a joint operation must furnish satisfactory evidence that their contributions of land, labor, management, equipment, or capital to the joint operation are commensurate with their claimed shares of the profits or losses of the joint operation.

(b) A member shall be considered to be actively engaged in farming with respect to a farming operation if the member makes a significant contribution of:

(1) Capital, equipment, or land or a combination of capital, equipment, or land; and

(2) Active personal labor or active personal management or a combination of active personal labor and active personal management.

(c) If a joint operation separately makes a significant contribution of capital, equipment, or land, or a combination of capital, equipment, or land, and the joint operation meets the provisions of § 1497.6(d), the members of the joint operation who make a significant contribution of active personal labor, active personal management, or a combination of active personal labor and active personal management to the farming operation shall be considered to be actively engaged in farming with respect to such farming operation.

(d) Each individual who shares in the profits or losses of such farming operation shall be considered to be a separate person only if the individual is actively engaged in the farming operation.

§ 1497.9 Limited partnerships, corporations and other similar entities.

(a) A limited partnership, corporation, or other similar entity shall be considered to be actively engaged in farming with respect to a farming operation if:

(1) The entity separately makes a significant contribution to the farming operation of capital, equipment, or land, or a combination of capital, equipment, or land; and

(2) The partners, stockholders, or members collectively make a significant contribution, whether compensated or not compensated, of active personal labor, active personal management, or a combination of active personal labor and active personal management to the farming operation. The combined beneficial interest of all the partners, stockholders, or members providing active personal labor or active personal management, or a combination of active personal labor or active personal management must be at least 50 percent.

(b) A limited partnership, corporation, or other similar entity shall be considered to be a person separate from an individual partner, stockholder, or member except that a limited partnership, corporation, or other similar entity in which more than 50 percent of the interest in such limited partnership, corporation, or other similar entity is owned by an individual (including the interest owned by the individual's spouse, minor children, and trusts for the benefit of such minor children) or by an entity shall not be considered as a separate person from such individual or entity.

(c) If the same two or more individuals or entities own more than 50 percent of the interest in each of two or more limited partnerships, corporations, or other similar entities engaged in farming, all such limited partnerships, corporations, or other similar entities shall be considered to be one person.

(d) The percentage share of the interest in a limited partnership, corporation, or other similar entity which is owned by an individual or other entity shall be determined as of April 1, or such other date as may be determined and announced by the Deputy Administrator. If a partner, stockholder, or member acquires an interest in the limited partnership, corporation, or other similar entity after such date, and on or before the harvest of the last program crop in the area as determined by the Deputy Administrator, the amount of any such interest shall be included in determining the total ownership interest of such partner, stockholder, or member.

(e) Where there is only one class of stock or other similar unit of ownership, an individual's or entity's percentage share of the limited partnership, corporation, or other similar entity shall be based upon the outstanding shares of stock or other similar unit of ownership held by the individual or entity and compared to the total outstanding shares of stock or other similar unit of ownership. If the limited partnership, corporation, or other similar entity has more than one class of stock or other unit of ownership, the percentage share of the limited partnership, corporation, or other similar entity owned by an individual or entity shall be determined by the Deputy Administrator on the basis of market quotations. If market quotations are lacking or are too scarce to be recognized, such percentage share shall be determined by the Deputy Administrator on the basis of all relevant factors affecting the fair market value of such stock or other unit of ownership, including the various rights and privileges which are attributed to each such class.

§ 1497.10 Trusts.

(a) A trust shall be considered to be actively engaged in farming with respect to a farming operation if:

(1) The entity separately makes a significant contribution to the farming operation of capital, equipment, or land, or a combination of capital, equipment, or land;

(2) The income beneficiaries collectively make a significant contribution of active personal labor or active personal management, or a combination of active personal labor and active personal management to the farming operation. The combined interest of all the income beneficiaries providing active personal labor or active personal managment, or a combination of active personal labor and active personal management must be at least 50 percent; and (3) The trust has provided a tax identification number for the trust to the county committee.

(b) A trust shall be considered to be a person separate from the individual income beneficiaries of the trust except that a trust which has a sole income beneficiary shall not be considered to be a separate person from such income beneficiary.

(c) Where two or more trusts have common income beneficiaries (including a spouse and minor children) with more than a 50 percent interest, all such trusts shall be considered to be one person.

(d) A revocable trust and the grantor of such revocable trust shall be considered to be one person.

[55 FR 1573, Jan. 17, 1990]

§ 1497.11 [Reserved]

§ 1497.12 Estates.

(a) For two program years after the program year in which an individual dies the individual's estate shall be considered to be actively engaged in farming if:

(1) The estate makes a significant contribution of either:

(i) Capital, equipment, or land; or

(ii) A combination of capital, equipment, or land; and

(2) The personal representative or heirs of the estate collectively make a significant contribution of either:

(i) Active personal labor or active personal management; or

(ii) A combination of active personal labor and active personal management.

(b) If the deceased individual would have been considered to be one person with respect to an heir, the estate shall also be considered to be one person with such heir.

(c) After the period set forth in paragraph (a) of this section, the deceased individual's estate shall not be considered to be actively engaged in farming unless, on a case by case basis, the Deputy Administrator determines that the estate has not been settled primarily for the purpose of obtaining program payments.

§ 1497.13 Landowners.

A person who is a landowner, including landowners with an undivided interest in land, making a significant contribution of owned land to the farming operation, shall be considered to be actively engaged in farming with respect to such owned land, if the landowner receives rent or income for such use of the land based on the land's production or the operation's operating results. A landowner also includes a member of a joint operation when the joint operation holds title to land in the name of the joint operation if the joint operation or its members submit adequate documentation to determine that, upon dissolution of the joint operation, the title to the land owned by the joint operation will revert to such a member of such joint operation.

[55 FR 1574, Jan. 17, 1990]

§ 1497.14 Family members.

With respect to a farming operation conducted by persons, a majority of whom are individuals who are family members, an adult family member who makes a significant contribution of active personal management, active personal labor, or a combination of active personal labor and active personal management shall be considered to be actively engaged in farming.

§ 1497.15 Sharecroppers.

A sharecropper who makes a significant contribution of active personal labor to the farming operation shall be considered to be actively engaged in farming.

§ 1497.16 Cash rent tenants.

(a) Effective for the 1989 crops, except as provided in paragraph (b) of this section, any tenant that is actively engaged in farming under the provisions of §§ 1497.6 through 1497.12 and conducts a farming operation in which the tenant rents the land for cash or a crop share guaranteed as to the amount of the commodity and receives benefits, including planted history credit under part 1413 of this chapter, with respect to such land under a program specified in § 1497.1 shall be considered to be the same person as the landlord unless the tenant makes a significant contribution to the farming operation of:

(1) Active personal labor and capital, land or equipment; or

(2) Active personal management and equipment. If such equipment is leased by the tenant from:

(i) The landlord, the lease must reflect the fair market value of the equipment leased.

(ii) The same individual or entity that is providing hired labor to the farming operation, the contracts for the lease of the equipment and for the hired labor must be two separate contracts which reflect the fair market value of the leased equipment and the hired labor and the tenant must exercise complete control over the use of a significant amount of the equipment during the current crop year.

(b) Any cash rent tenant that because of any act or failure to act would not meet the provisions of either paragraph (a) (1) or (2) of this section and would therefore be considered to be the same person as the landlord under provisions in paragraph (a) of this section shall not be considered the same person if the county committee had previously determined the tenant and landlord to be separate persons, and the landlord did not consent to or knowingly participate in the tenant's failure to meet the provision of either paragraph (a) (1) or (2) of this section.

(c) Any cash rent tenant that would be considered to be the same person as the landlord except for the provisions of paragraph (b) of this section shall be eligible to receive payments with respect to such cash rented land only to the extent that the cash rent tenant would have received such payments if the provisions of paragraph (b) of this section did not apply.

(d) Effective only for the 1990 crops, any tenant that is actively engaged in farming under the provisions of §§ 1497.6 through 1497.12 and conducts a farming operation in which the tenant rents the land for cash or a crop share guaranteed as to the amount of the commodity and receives benefits, including planted history credit under part 1413 of this chapter, with respect to such land under a program specified in § 1497.1 shall be ineligible to receive any payment with respect to such cash rented land unless the tenant makes a significant contribution to the farming operation of:

(1) Active personal labor and capital, land or equipment; or

(2) Active personal management and equipment. If such equipment is leased by the tenant from:

(i) The landlord, the lease must reflect the fair market value of the equipment leased.

(ii) The same individual or entity that is providing hired labor to the farming operation, the contracts for the lease of the equipment and for the hired labor must be two separate contracts which reflect the fair market value of the leased equipment and the hired labor and the tenant must exercise complete control over the use of a significant amount of the equipment during the current crop year.

[55 FR 1574, Jan. 17, 1990]

§ 1497.17 Persons not considered to be actively engaged in farming.

An individual or entity who does not meet any of the provisions of § 1497.7 through 1497.15 and a landowner who rents land to a farming operation for cash or a crop share guaranteed as to the amount of the commodity shall not be considered to be actively engaged in farming.

§ 1497.18 Changes in the operation of a farm.

Any change in a farming operation that would otherwise increase the number of persons to which the provisions of this part apply to the programs specified in § 1497.1 are applied must be bona fide and substantive. A change in a farming operation in a previous year that was not considered to be bona fide and substantive shall not increase the number of persons in a subsequent year. If bona fide, the following shall be considered to be substantive changes in the farming operation:

(a) The addition of a family member to a farming operation in accordance with § 1497.14, except that such an addition will not affect the status of any other individual or entity which is added to the farming operation.

(b) With respect to a landowner only, a change from a cash rent to a share rent.

(c) An increase through the acquisition of land not previously involved in the farming operation of approximately 20 percent or more in the total cropland involved in the farming operation if such cropland has crop acreage bases which are at least normal for the area.

(d) A change in ownership by sale or gift of a significant amount of equipment from an individual or entity who previously has been engaged in a farming operation to an individual or entity who has not been involved in any farming operation. The sale or gift of equipment will be considered to be bona fide and substantive only if the transferred amount of such equipment is commensurate with the new individual's or entity's share of such farming operation.

(e) A change in ownership by sale or gift of a significant amount of land from an individual or entity who previously has been engaged in a farming operation to an individual or entity who has not been involved in any farming operation. The sale or gift of land will be considered to be bona fide and substantive only if the transferred amount of such land is commensurate with the new individual's or entity's share of such farming operation.

(f) The Deputy Administrator may determine other bona fide changes to be substantive.

[55 FR 1574, Jan. 17, 1990]

§ 1497.19 Husband and wife.

With respect to any married couple, the husband and wife shall be considered to be one person except that a husband and wife, who prior to their marriage were separately engaged in unrelated farming operations, will be determined to be separate persons with respect to such farming operations so long as such operations remain separate and distinct from any farming operation conducted by the other spouse.

[53 FR 29571, Aug. 5, 1988, as amended at 55 FR 1575, Jan. 17, 1990]

§ 1497.20 Minor children.

(a) Except as provided in paragraph (b) of this section, a minor, including a minor who is the beneficiary of a trust or who is an heir of an estate, and the parent or any court-appointed person such as a guardian or conservator who is responsible for the minor shall be considered to be one person.

(b) A minor may be considered to be a separate person from the minor's parent or any court appointed person such as a guardian or conservator who is responsible for the minor if the minor is a producer on a farm and the minor's parent or any court appointed person such as a guardian or conservator who is responsible for the minor does not have any interest in the farm on which the minor is a producer or in any production from such farm. In addition it must be determined that the minor:

(1) Has established and maintains a separate household from the minor's parents or any court-appointed person such as a guardian or conservator who is responsible for the minor and such minor personally carries out the farming activities with respect to the minor's farming operation for which there is a separate accounting; or

(2) Does not live in the same household as such minor's parent and:

(i) Is represented by a court-appointed guardian or conservator who is responsible for the minor; and

(ii) Ownership of the farm is vested in the minor.

(c) A person shall be considered to be a minor until the age 18 is reached. Court proceedings conferring majority on a person under 18 years of age will not change such person's status as a minor.

§ 1497.21 Charitable organizations.

Charitable organizations, including a club, society, fraternal or religious organization, shall be considered to be a separate person to the extent that such an entity is engaged in the production of crops as a separate person, except where the land or the proceeds from the farming operation may revert to an entity which exercises control or authority over such organization.

§ 1497.22 Indian tribal ventures.

Payments may be made in excess of an applicable payment limitation provision with respect to land which is owned or held in trust for an Indian tribal council and not rented or otherwise acquired by an Indian tribal venture if a responsible official of the Bureau of Indian Affairs (BIA) or the Indian tribal council certifies that no payment in excess of such limitation will accrue directly or indirectly to any individual Indian, including the individual's spouse and minor children. Individual American Indians which receive payments through an Indian tribal venture as well as under the provisions found in §§ 1497.6 to 1497.15 are required to certify that they will not accrue total payments, including payments made to the Indian tribal venture and to the individual American Indian, in excess of the applicable payment limitation for programs specified in § 1497.1.

[53 FR 29571, Aug. 5, 1988, as amended at 55 FR 1575, Jan. 17, 1990]

§ 1497.23 States, political subdivisions, and agencies thereof.

A State, political subdivision and agencies thereof shall be considered to be one person.

§ 1497.24 Scheme or device.

(a) All or any part of the payment otherwise due a person on all farms in which the person has an interest may be withheld or be required to be refunded if the person adopts or participates in adopting a scheme or device which is designed to evade this part or which has the effect of evading this part. Such acts shall include, but are not limited to:

(1) Concealing information which affects the application of this part;

(2) Submitting false or erroneous information; or

(3) Creating fictitious entities for the purpose of concealing the interest of a person in a farming operation.

(b) If the Deputy Administrator determines that any person has adopted a scheme or device to evade, or that has the purpose of evading, the provisions of section 1001, 1001A, or 1001C of the Food Security Act of 1985 such person shall be ineligible to receive payments under the programs specified in § 1497.1(a)(1)-(3) with respect to the year for which such scheme or device was adopted and the succeeding year.

§ 1497.25 Joint and several liability.

If two or more individuals or entities are considered to be one person and the total payment received is in excess of the applicable payment limitation provision, such individuals or entities shall be jointly and severally liable for any liability which arises therefrom. The provisions of this section shall be applicable in addition to any liability which arises under a criminal or civil statute.

§ 1497.26 Equitable adjustments.

(a) Actions taken by an individual or an entity in good faith on action or advice of an authorized representative of the Deputy Administrator may be accepted as meeting the requirements of this part to the extent the Deputy Administrator deems necessary in order to provide fair and equitable treatment to such individual or entity.

(b) In cases in which the application of this part will reduce payments to a farming operation, the Deputy Administrator may waive the application of the provisions of § 1497.18 with respect to any reorganization applied for prior to April 1, 1989, or such other date as may be determined and announced by the Deputy Administrator, to the extent the Deputy Administrator determines appropriate to facilitate equitable reorganizations that do not result in an increase in payments.

§ 1497.27 Appeals.

(a) Any person may obtain reconsideration and review of determinations made under this part in accordance with the appeal regulations set forth at Part 780 of this title. With respect to such appeals, the applicable reviewing authority shall:

(1) Schedule a hearing with respect to the appeal within 45 days following receipt of the written appeal; and

(2) Issue a determination within 60 days following the hearing.

(b) The time limitations provided in paragraph (a) of this section shall not apply if:

(1) The appellant, or the appellant's representative, requests a postponement of the scheduled hearing;

(2) The appellant, or the appellant's representative, requests additional time following the hearing to present additional information or a written closing statement;

(3) The appellant has not timely presented information to the reviewing authority; or

(4) An investigation by the Office of Inspector General is ongoing or a court proceeding is involved which affects the amount of payments a person may receive.

(c) If the deadlines provided in paragraphs (a) and (b) of this section are not met, the relief sought by the producer's appeal will be granted for the applicable crop year unless the Deputy Administrator determines that the producer did not follow the farm operating plan which was presented initially to the county committee for the year which is the subject of the appeal.

(d) An appellant may waive the provisions of paragraphs (a) and (b) of this section.

§ 1497.28 Paperwork Reduction Act assigned number.

The information collection requirements contained in this part have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control number 0560-0096.

PART 1498—FOREIGN PERSONS INELIGIBLE FOR PROGRAM BENEFITS

Sec.
1498.1 Applicability.
1498.2 Administration.
1498.3 Definitions.
1498.4 Ineligibility.
1498.5 Notification.
1498.6 Scheme or device.
1498.7 Equitable relief.
1498.8 Appeals.
1498.9 Paperwork Reduction Act assigned number.

Authority: 7 U.S.C. 1308, *et seq.*

Source: 53 FR 29577, Aug. 5, 1988, unless otherwise noted.

§ 1498.1 Applicability.

This part is applicable to any type of payment, loan, and benefit made with respect to 1989 and 1990 crops. This part is not applicable to any payment, loan, and benefit which is made with respect to the production of a commodity planted, or commodity program or Conservation Reserve Program contract approved, before December 22, 1987.

§ 1498.2 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the Executive Vice President, CCC, and the Administrator, ASCS. In the field, the regulations in this part will be administered by the Agricultural Stabilization and Conservation State and county committees (herein referred to as "State and county committees", respectively). State and county executive directors and State and county committees do not have authority to modify or waive any of the provisions of this part.

(b) The State committee may take any action authorized or required by this part to be taken by the county committee which has not been taken by such committee. The State committee may also:

(1) Correct or require a county committee to correct any action taken by such county committee which is not in accordance with this part; or

(2) Require a county committee to withhold taking any action which is not in accordance with this part.

(c) No delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, and the Administrator, ASCS, or a designee, from determining any question arising under this part or from reversing or modifying any determination made by a State or county committee.

§ 1498.3 Definitions.

(a) The terms defined in Part 719 of this chapter shall be applicable to this part and all documents issued in accordance with this part, except as otherwise provided in this section.

(b) The following definitions shall be applicable to this part:

Active Personal Labor. Active personal labor is personally providing physical activities necessary in a farming operation, including activities involved in land preparation, planting, cultivating, harvesting, and marketing of agricultural commodities in the farming operation. Other physical activities include those physical activities required to establish and maintain conserving cover crops or conserving use acreages and those physical activities necessary in livestock operations.

Alien. Any person not a citizen or national of the United States.

Capital. Capital consists of the funding provided by an individual or entity to the farming operation in order for such operation to conduct farming activities. In determining whether an individual or entity has contributed capital to the farming operation, such capital must have been derived from a fund or account separate and distinct from that of any other individual or entity involved in such operation. Capital does not include the value of any labor or management which is contributed to the farming operation. A capital contribution may be a direct out-of-pocket input of a specified sum or an amount borrowed by the individual or entity. (1) With respect to a farming operation conducted by an individual, a joint operation in which the capital is contributed by a member of the joint operation under the provisions of § 1497.8(b), or entity, such capital contributed to meet the requirements of:

(i) Section 1497.6(b) must be contributed directly by the individual or entity and must not be acquired as a result of a loan made to, guaranteed, or secured by:

(A) Any other individual, joint operation, or entity that has an interest in such farming operation.

(B) Such individual, joint operation, or entity by any other individual, joint operation, or entity which has an interest in such farming operation.

(C) Any other individual, joint operation, or entity in whose farming operation such individual, joint operation, or entity has an interest.

(ii) Section 1497.6(d) must be contributed directly by the individual or entity and if acquired as a result of a loan made to, guaranteed, or secured by the individuals, joint operations, or entities provided in items (1)(i)(A) through (1)(i)(C) of this definition, the loan must bear the prevailing interest rate.

(2) With respect to a farming operation conducted by a joint operation in which the capital is contributed by such joint operation under the provisions of § 1497.8(c), such capital contributed to meet the requirements of:

(i) Section 1497.6(b) must be contributed directly by the joint operation and must not be acquired as a result of a loan made to, guaranteed, or secured by:

(A) Any individual, entity, or other joint operation which has an interest in such farming operation, including either joint operation's members.

(B) Such joint operation by any individual, entity, or other joint operation which has an interest in such farming operation.

(C) Any individual, entity, or other joint operation in whose farming operation such joint operation has an interest.

(ii) Section 1497.6(d) must be contributed directly by the joint operation and if acquired as a result of a loan made to, guaranteed, or secured by the individuals, entities, or joint operations provided in terms (2)(i)(A) through (2)(i)(C) of this definition the loan must bear the prevailing interest rate.

Entity. An entity is a corporation, joint stock company, association, limited partnership, irrevocable trust, revocable trust, estate, charitable organization, or other similar organization including any such organization participating in the farming operation as a partner in a general partnership, a participant in a joint venture, a grantor of a revocable trust, or as a participant in a similar organization.

Land. Land is farmland consisting of cropland, pastureland, wetland, or rangeland which meets the specific requirements of the applicable program.

(1) With respect to a farming operation conducted by an individual, a joint operation in which the land is contributed by a member of the joint operation under the provisions of § 1497.8(b), or entity, such land contributed to meet the requirements of:

(i) Section 1497.6(b) must be contributed directly by the individual or entity and must not be acquired as a result of a loan made to, guaranteed, or secured by:

(A) Any other individual, joint operation, or entity that has an interest in such farming operation.

(B) Such individual, joint operation, or entity by any other individual, joint operation, or entity which has an interest in such farming operation.

(C) Any other individual, joint operation, or entity in whose farming operation such individual, joint operation, or entity has an interest.

(ii) Section 1497.6(d) must be contributed directly by the individual or entity and if acquired as a result of a loan made to, guaranteed, or secured by the individuals, joint operations, or entities provided in items (1)(i)(A) through (1)(i)(C) of this definition the loan must be a loan bearing the prevailing interest rate.

(2) With respect to a farming operation conducted by a joint operation in which the land is contributed by such joint operation under the provisions of § 1497.8(c), such land contributed to meet the requirements of:

(i) Section 1497.6(b) must be contributed directly by the joint operation and must not be acquired as a result of a loan made to, guaranteed, or secured by:

(A) Any individual, entity, or other joint operation which has an interest in such farming operation, including either joint operation's members.

(B) Such joint operation by an individual, entity, or other joint operation which has an interest in such farming operation.

(C) Any individual, entity, or other joint operation in whose farming operation such joint operation has an interest.

(ii) Section 1497.6(d) must be contributed directly by the joint operation and if acquired as a result of a loan made to, guaranteed, or secured by the individuals, entities, or joint operations provided in items (2)(i)(A) through (2)(i)(C) of this definition the loan must bear the prevailing interest rate.

Lawful Alien. Any person that is not a citizen or national of the United States but who is admitted into the United States for permanent residence under the Immigration and Nationality Act and possesses a valid Alien Registration Receipt Card (Form I-551 or I-151).

Payment, Loan, and Benefit. A payment, loan, or benefit made in accordance with the Agricultural Act of 1949, the Commodity Credit Corporation Charter Act, or Subtitle D of Title XII of the Food Security Act of 1985, which results in a direct expenditure by the Commodity Credit Corporation or any other agency of the Federal government, including a payment made in accordance with Part 1470 of this title. Such term does not include the establishment of crop acreage bases, farm program payment yields, acreage allotments, marketing quotas, and similar program provisions.

Person. (1) A person is:

(i) An individual, including any individual participating in a farming operation as a partner in a general partnership, a participant in a joint venture, or a participant in a similar entity;

(ii) A corporation, joint stock company, association, limited partnership, irrevocable trust, revocable trust together with the grantor of the trust, estate, or charitable organization, including any such entity or organization participating in the farming operation as a partner in a general partnership, a participant in a joint venture, a grantor of a revocable trust, or as a participant in a similar entity; and

(iii) A State, political subdivision, or agency thereof.

(2) In order for an individual or entity other than an individual or entity who is a member of a joint operation to be considered a separate person for the purposes of this part, in addition to other provisions of this part, the individual or entity must:

(i) Have a separate and distinct interest in the land or the crop involved;

(ii) Exercise separate responsibility for such interest; and

(iii) Maintain funds or accounts separate from that of any other individual or entity for such interest.

(3) With respect to an individual or entity who is a member of a joint operation, such individual or entity will have met the requirements of paragraph (2) of this definition if the joint operation meets the requirements of such paragraph.

(4) Any cooperative association of producers that markets commodities for producers with respect to the commodities so marketed for producers shall not be considered to be a person.

Substantial amount of active personal labor. Substantial amount of active personal labor means the provision of active personal labor in an amount which is the smaller of:

(1) 1,000 hours per calendar year; or

(2) 50 percent of the total hours which would be required to conduct a

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farming operation which is comparable in size to such individual's or entity's commensurate share in the farming operation.

[53 FR 29577, Aug. 5, 1988, as amended at 55 FR 1575, Jan. 17, 1990]

§ 1498.4 Ineligibility.

(a) Any person who is not a citizen of the United States or a lawful alien shall be ineligible to receive payments, loans and benefits, with respect to any commodity produced, or land set aside from production, on a farm that is owned or operated by such person unless such person is an individual who is providing land, capital, and a substantial amount of active personal labor on such farm.

(b)(1) A corporation or other entity shall be ineligible to receive payments, loan, and benefits if more than 10 percent of the beneficial ownership of the entity is held by persons who are not citizens of the United States or lawful aliens unless such persons provide a substantial amount of active personal labor in the production of crops on a farm owned or operated by such an entity. However, upon the written request of the entity, the Deputy Administrator may make payments in an amount determined by the Deputy Administrator to be representative of the percentage interest of the entity which is owned by citizens of the United States and lawful aliens.

(2) In determining whether more than 10 percent of the beneficial ownership of an entity is held by such persons, the beneficial ownership interest shall be the higher of the amount of such interest on:

(i) The date the applicable program contract or agreement is executed by the entity; or

(ii) Any other date prior to the final harvest date which is determined and announced by the Deputy Administrator to be normal in the area for the applicable program crop.

(3) A corporation or other entity shall inform the county committee of any increase in such ownership which occurs after the applicable program contract or agreement is executed.

(4) In the event of an increase in such ownership after a payment, loan, and benefit has been made, the entity shall refund such payment, loan, and benefit.

(5) Where there is only one class of stock or other similar unit of ownership, an individual's or entity's percentage share of the limited partnership, corporation or other similar entity shall be based upon the outstanding shares of stock or other similar unit of ownership held by the individual or entity and compared to the total outstanding shares of stock or other similar unit of ownership. If the limited partnership, corporation or other similar entity has more than one class of stock or other unit of ownership, the percentage share of the limited partnership, corporation or other similar entity owned by an individual or entity shall be determined by the Deputy Administrator on the basis of market quotations. If market quotations are lacking or are too scarce to be recognized, such percentage share shall be determined by the Deputy Administrator on the basis of all relevant factors affecting the fair market value of such stock or other unit of ownership, including the various rights and privileges which are attributed to each such class.

(c) A citizen of the United States, lawful alien, and entity which is not subject to this part who is in lawful possession, through a lease or otherwise, of a farm owned by an individual or entity who is subject to this part or who is successor-in-interest to a program contract or agreement with respect to such a farm may receive a payment, loan, and benefit without regard to this part.

[53 FR 29577, Aug. 5, 1988, as amended at 55 FR 1576, Jan. 17, 1990]

§ 1498.5 Notification.

(a) Any entity, whether foreign or domestic, who executes a program contract or agreement under which a payment, loan, and benefit may be available must provide written notification to the county committee in the county where the entity conducts its farming operation if:

(1) Any individual, group of individuals, entity, or group of entities holds more than a 10 percent beneficial interest in such entity; and

(2) Such individual, group of individuals, entity, or group of entities, in accordance with § 1498.4, are ineligible to receive a payment, loan and benefit.

(b) Such written notification should include the name and social security number or taxpayer identification number of such individual or entity and of all individuals and entities that hold a beneficial interest.

(c) The failure of the entity to provide this information will result in the ineligibility of the entity to receive any payment, loan, and benefit.

§ 1498.6 Scheme or device.

(a) All or any part of the payment otherwise due a person on all farms in which the person has an interest may be withheld or be required to be refunded if the person adopts or participates in adopting a scheme or device which is designed to evade this part or which has the effect of evading this part. Such acts shall include, but are not limited to:

(1) Concealing information which affects the application of this part;

(2) Submitting false or erroneous information; or

(3) Creating any fictitious entity for the purpose of concealing the interest of a person in a farming operation.

(b) If the Deputy Administrator determines that any person has adopted a scheme or device to evade, or that has the purpose of evading, the provisions of section 1001, 1001A, or 1001C, of the Food Security Act of 1985, such person shall be ineligible to receive payments under the programs specified in § 1498.1 with respect to the year for which such scheme or device was adopted and the succeeding year.

§ 1498.7 Equitable relief.

Actions taken by an individual or an entity in good faith on action or advice of an authorized representative of the Deputy Administrator may be accepted as meeting the requirements of this part to the extent the Deputy Administrator deems necessary in order to provide fair and equitable treatment to such individual or entity.

§ 1498.8 Appeals.

Any person may obtain reconsideration and review of determinations made under this part in accordance with the appeal regulations set forth as Part 780 of this title.

§ 1498.9 Paperwork Reduction Act assigned number.

The information collection requirements contained in this part have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control number 0560-0096.

PART 1499 [RESERVED]

FINDING AIDS

A list of current CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

Material Approved for Incorporation by Reference
Table of CFR Titles and Chapters
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Material Approved for Incorporation by Reference

The Director of the Federal Register has approved under 5 U.S.C. 552(a) and 1 CFR Part 51 the incorporation by reference of the following publications. This list contains only those incorporations by reference effective as of the revision date of this volume. Incorporations by reference found within a regulation are effective upon the effective date of that regulation. For more information on incorporation by reference, see the preliminary pages of this volume.

7 CFR CHAPTER XIV (PARTS 1402–1499)
COMMODITY CREDIT CORPORATION, DEPARTMENT OF AGRICULTURE

	7 CFR
Joint Cotton Industry Bale Packaging Committee, National Cotton Council of America P.O. Box 12285 Memphis, TN 38112	
Specifications for Cotton Bale Packaging Material, 1988	1427.5

Table of CFR Titles and Chapters

(Revised as of January 1, 1991)

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I	Administrative Committee of the Federal Register (Parts 1—49)
II	Office of the Federal Register (Parts 50—299)
III	Administrative Conference of the United States (Parts 300—399)
IV	Miscellaneous Agencies (Parts 400—500)

Title 2—[Reserved]

Title 3—The President

I	Executive Office of the President (Parts 100—199)

Title 4—Accounts

I	General Accounting Office (Parts 1—99)
II	Federal Claims Collection Standards (General Accounting Office—Department of Justice) (Parts 100—299)
III	General Accounting Office (CASB) (Parts 300—499)

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I	Office of Personnel Management (Parts 1—1199)
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VIII	Office of Special Council (Parts 1800—1899)
IX	Appalachian Regional Commission (Parts 1900—1999)
XI	United States Soldiers' and Airmen's Home (Parts 2100—2199)
XIV	Federal Labor Relations Authority, General Counsel of the Federal Labor Relations Authority and Federal Service Impasses Panel (Parts 2400—2499)

Title 5—Administrative Personnel—Continued

Chap.	
XV	Office of Administration, Executive Office of the President (Parts 2500—2599)
XVI	Office of Government Ethics (Parts 2600—2699)

Title 6—[Reserved]

Title 7—Agriculture

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	SUBTITLE A—Office of the Secretary of Agriculture (Parts 0—26)
	SUBTITLE B—Regulations of the Department of Agriculture
I	Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture (Parts 27—209)
II	Food and Nutrition Service, Department of Agriculture (Parts 210—299)
III	Animal and Plant Health Inspection Service, Department of Agriculture (Parts 300—399)
IV	Federal Crop Insurance Corporation, Department of Agriculture (Parts 400—499)
V	Agricultural Research Service, Department of Agriculture (Parts 500—599)
VI	Soil Conservation Service, Department of Agriculture (Parts 600—699)
VII	Agricultural Stabilization and Conservation Service (Agricultural Adjustment), Department of Agriculture (Parts 700—799)
VIII	Federal Grain Inspection Service, Department of Agriculture (Parts 800—899)
IX	Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture (Parts 900—999)
X	Agricultural Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture (Parts 1000—1199)
XI	Agricultural Marketing Service (Marketing Agreements and Orders; Miscellaneous Commodities), Department of Agriculture (Parts 1200—1299)
XIV	Commodity Credit Corporation, Department of Agriculture (Parts 1400—1499)
XV	Foreign Agricultural Service, Department of Agriculture (Parts 1500—1599)
XVI	Rural Telephone Bank, Department of Agriculture (Parts 1600—1699)
XVII	Rural Electrification Administration, Department of Agriculture (Parts 1700—1799)
XVIII	Farmers Home Administration, Department of Agriculture (Parts 1800—2099)
XXI	Foreign Economic Development Service, Department of Agriculture (Parts 2100—2199)
XXII	Office of International Cooperation and Development, Department of Agriculture (Parts 2200—2299)

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Chap.	
XXIV	Board of Contract Appeals, Department of Agriculture (Parts 2400—2499)
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